

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----
4 NEW YORK IMMIGRATION COALITION, ET AL.,

5 Plaintiffs,

6 vs. Case No. 1:18-CF-05025-JMF

7 UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,

8 Defendants.
9 -----

10 Washington, D.C.

11 Thursday, August 30, 2018

12 Deposition of:

13 EARL COMSTOCK

14 called for oral examination by counsel for
15 Plaintiffs, pursuant to notice, at the office of
16 Arnold & Porter, 601 Massachusetts Avenue NW,
17 Washington, D.C., before KAREN LYNN JORGENSEN,
18 RPR, CSR, CCR of Capital Reporting Company,
19 beginning at 9:08 a.m., when were present on
20 behalf of the respective parties:
21
22

1	CONTENT				PAGE
2	EARL COMSTOCK				9
3	Examination by Mr. Colangelo				9
4	Examination by Mr. Gersch				241
5	Examination by Mr. Rosenberg				336
6	Examination by Ms. Senteno				381
7	Examination by Ms. Boutin				419
8	COMSTOCK DEPOSITION EXHIBITS				
9	EXHIBIT				PAGE
10	NUMBER				
11	Plaintiffs'	Exhibit 1	Email		56
12	Plaintiffs'	Exhibit 2	Email		62
13	Plaintiffs'	Exhibit 3	Email		82
14	Plaintiffs'	Exhibit 4	Email		87
15	Plaintiffs'	Exhibit 5	Memo		93
16	Plaintiffs'	Exhibit 6	Email		114
17	Plaintiffs'	Exhibit 7	Email		120
18	Plaintiffs'	Exhibit 8	Email		123
19	Plaintiffs'	Exhibit 9	Email		137
20	Plaintiffs'	Exhibit 10	Email		145
21	Plaintiffs'	Exhibit 11	Email		147
22	Plaintiffs'	Exhibit 12	Email		158
23	Plaintiffs'	Exhibit 13	Email		164
24	Plaintiffs'	Exhibit 14	Email		167
25	Plaintiffs'	Exhibit 15	Memo		182
26	Plaintiffs'	Exhibit 16	Memo		189
27	Plaintiffs'	Exhibit 17	Meeting notification		194
28	Plaintiffs'	Exhibit 18	Email		199
29	Plaintiffs'	Exhibit 19	Email		212
30	Plaintiffs'	Exhibit 20	Email		215
31	Plaintiffs'	Exhibit 21	Email		218
32	Plaintiffs'	Exhibit 22	Email		219
33	Plaintiffs'	Exhibit 23	Email		221
34	Plaintiffs'	Exhibit 24	Email		224
35	Plaintiffs'	Exhibit 25	Email		226
36	Plaintiffs'	Exhibit 26	Email		234
37	Plaintiffs'	Exhibit 27	Testimony from		293

1		Committee on	
2		Oversight and	
		Government	
		Reform	
3	Plaintiffs' Exhibit 28	Memo	309
	Plaintiffs' Exhibit 29	Memo	317
4	Plaintiffs' Exhibit 30	Decisional	326
		memorandum	
5	Plaintiffs' Exhibit 31	Questions on	372
6		draft Census	
		memo	
	Plaintiffs' Exhibit 32	Memo	374
7	Plaintiffs' Exhibit 33	Questions on	376
		draft Census	
8		memo	
	Plaintiffs' Exhibit 34	Email	378
9	Plaintiffs' Exhibit 35	Trump campaign	383
		email	

(Exhibits attached to transcript.)

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1 VIDEOGRAPHER: Dan Reidy

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P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We are going on the record at 9:01 a.m. on Thursday, August 30, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones or place them away from the microphones, as that can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to going off the record.

This is Media Unit 1 of the video recorded deposition of Earl Comstock to be taken by counsel for the plaintiff in the matter of the New York Immigration Coalition, et al., v. The United States Department of Commerce, et al. This case is filed in the United States District Court for the Southern District of New York. This deposition is being held at the law office of Arnold & Porter located at 601 Massachusetts Avenue Northwest, Washington, D.C. 20001.

1 My name is Dan Reidy from the firm
2 Veritext Legal Solutions, and I am the
3 videographer. The court reporter is Karen
4 Jorgenson from Veritext Legal Solutions.

5 I am not authorized to administer an
6 oath. I am not related to any party in this
7 action, nor am I financially interested in the
8 outcome.

9 Also, counsel appearances will be noted
10 on the stenographic report rather than orally at
11 this time.

12 Will the court reporter please swear in
13 the witness?

14 EARL COMSTOCK,
15 called as a witness, and having been first duly
16 sworn, was examined and testified as follows:

17 THE WITNESS: I do.

18 EXAMINATION BY MR. COLANGELO:

19 Q Please state your name and work address.

20 A Earl Comstock, U.S. Department of
21 Commerce.

22 Q And we met a minute ago, but for the

1 record, I'm Matthew Colangelo. I work for the
2 New York Attorney General, and I represent
3 plaintiffs in one of the actions challenging the
4 inclusion of a citizenship question on the
5 decennial census. I'll be taking your deposition
6 today.

7 Have you been deposed before?

8 A Nope.

9 Q Okay. So I will ask questions. I just
10 ask that you answer honestly and completely. If
11 at any point you don't understand a question I've
12 asked, please just let me know that it was unclear
13 and I can see if I can rephrase it.

14 A Okay.

15 Q Does that work?

16 A Sure.

17 Q Karen introduced herself. She's
18 transcribing this deposition. She'll be taking
19 down my questions and your answers. In order to
20 make sure that we have a clear transcript, please
21 wait until I'm done asking a question before you
22 answer it, and I will try to make sure I don't

1 interrupt your answers either.

2 Sound good?

3 A Sounds perfect.

4 Q Great.

5 Can you tell me how you prepared for your
6 deposition today?

7 A Met with counsel yesterday.

8 Q And did you review any documents during
9 that meeting?

10 A A few documents that are in the record,
11 yes.

12 Q Great.

13 And did you review any of those documents
14 for the purpose of refreshing your recollection
15 about any of the events involved in this lawsuit?

16 A No.

17 Q Tell me about your educational background
18 after high school.

19 A After high school, I went to the
20 University of California Santa Barbara, and then
21 worked in Alaska for a couple years. Started
22 working for Senator Ted Stevens from Alaska and

1 the Senate Committee, Science and Transportation.
2 Did that for ten years.

3 Left the Hill, and became a partner at a
4 law firm. Did that for six years, and then was
5 CEO of a trade organization for two years. Ran my
6 own consulting firm for about seven years. Went
7 back to a law firm for about a year and a half,
8 and then became counsel for a start-up.

9 Q Okay. So I got your UCSB degree. That
10 was a bachelor's degree?

11 A Correct.

12 Q And I may have missed it in your answer.
13 But I take it at some point you earned a law
14 degree.

15 A I did.

16 Q Okay.

17 A I went to night law school while working
18 for the Senate.

19 Q Got it.

20 And what year did you earn your J.D.?

21 A 1992.

22 Q 1992. Okay.

1 And are you currently admitted to the
2 practice?

3 A In the District, yes.

4 Q In D.C.

5 Is your registration active or inactive?

6 A I believe it's active. I'd have to go
7 double-check.

8 Q Okay. And are you admitted in any other
9 states?

10 A I was admitted in Alaska and that's
11 inactive.

12 (Thereupon, the court reporter
13 clarified.)

14 BY MR. COLANGELO:

15 Q And tell me what your college degree
16 field of study was?

17 A Political science.

18 Q Do you have any education training or
19 experience in statistics?

20 A Did -- well, George Mason University does
21 accounting, statistics and economics for lawyers,
22 which is a required part of the course. So I had

1 two years of that, and also had an environmental
2 science minor at UCSB, so did a number of
3 statistics and chemistry and biology courses in
4 relation to that.

5 Q And by in relation to that, you mean in
6 relation to the environmental science degree?

7 A Correct.

8 Q Okay. Do you have any education,
9 training or experience in survey methodology?

10 A No.

11 Q Do you have any education, training or
12 experience in demography?

13 A Other than basic introduction to
14 demography, no.

15 Q What do you mean by introduction?

16 A Well, what you take in an undergraduate
17 course that covers demography.

18 Q Okay. Do you have any education,
19 training or experience in voting rights law?

20 A No.

21 Q Do you have any education training or
22 experience in redistricting?

1 A No.

2 Q Do you have any education, training or
3 experience in election law?

4 A Again, other than as an attorney and the
5 ability to read laws, no.

6 Q Okay. By as an attorney and the ability
7 to read laws, you mean if you needed to read a
8 law, you could?

9 A Meaning if I had read a statute related
10 to those, then I would be able to understand it,
11 yes.

12 Q But you've never studied election law?

13 A I've never studied election law.

14 Q You've never practiced election law?

15 A No.

16 Q Okay. Were -- between November 2016 and
17 February 2017, you were a member of the
18 presidential transition team?

19 A From November -- yeah, just after
20 Thanksgiving until I began working for the
21 Department of Commerce, yes.

22 Q Okay. And when did you begin working at

1 Department of Commerce?

2 A January 31st, I believe.

3 Q 31st, okay.

4 When did you join the presidential
5 transition team?

6 A This would have been around
7 November 28th.

8 Q And what were your responsibilities on
9 the transition?

10 A I was Sherpa for getting people through
11 the confirmation in the Senate Commerce Committee.

12 Q Sherpa for getting people through
13 confirmation in the Senate Commerce meeting.

14 Can you tell me what Sherpa means as you
15 use that term?

16 A Yeah. It's a colloquial term. It's
17 basically a person that helps the nominee, and in
18 my case, I had two nominees that were
19 being -- would be considered by the
20 Senate Commerce Committee. So you advise them on,
21 you know, what the different members are going to
22 care about, what the general subject matter issues

1 are. As former staff for the committee, I was
2 familiar with the issues that would be of
3 importance to the members of the committee, so
4 that's why I was asked to do the job.

5 Q You mentioned that you were the Sherpa
6 for nominees through the Senate Commerce
7 Committee. I take it one of those was
8 Secretary Ross?

9 A Secretary Ross and Deputy Secretary
10 Todd Riggins.

11 Q And did your responsibilities on the
12 transition team include anything other than the
13 Sherpa role you've just described?

14 A No.

15 Q Did you work on the campaign, at all --
16 the presidential campaign for the 2016
17 presidential --

18 A I did not.

19 Q What -- tell me a little bit more about
20 your role as Sherpa for the Secretary.

21 A Well, it involved setting up meetings
22 with members of the committee, advising the

1 Secretary on subject matter that
2 Department of Commerce handles and that the
3 committee cares about. My particular areas of
4 expertise are fisheries and telecommunications,
5 and so those are two rather arcane but rather
6 important areas of the Senate Commerce Committees
7 jurisdiction.

8 I've also, as former legislative director
9 for Senator Stevens, basically covered all of the
10 issues in front of the committee, so aviation,
11 space, science issues, climate change, all of
12 those.

13 Q And what were the specific issues that
14 you briefed Secretary -- or then nominee Ross on?

15 A Essentially, everything that the
16 department covers across the board, including the
17 census, to the extent I had background.

18 Q Okay. And tell me -- I want to ask you a
19 couple questions about that. But before we do, in
20 addition to preparing the Secretary -- or the
21 nominee, I should say --

22 A Right.

1 Q -- for his meetings and his hearing, did
2 you have any role in developing policy positions
3 for the incoming administration?

4 A Not in that sense, no.

5 Q Not in what sense?

6 A Not in -- no. I was not involved in the
7 policy discussions. There were different teams
8 handling that.

9 Q Okay. You were not -- you're not
10 involved in developing policy?

11 A Correct.

12 Q And did you participate in any policy
13 meetings, at all?

14 A No.

15 Q Okay. You mentioned that among others,
16 you briefed the Secretary on Census Bureau
17 matters; is that right?

18 A Right. For example, doing the census in
19 Alaska is handled differently than the rest of the
20 census.

21 Q How so?

22 A Well, they start it in January so that

1 you don't -- in a lot of the remote villages, if
2 you tried to do the census on census day, the
3 rivers would be impassable. So people would be
4 able -- unable to get in and out to get to the
5 census.

6 So that is an area that Senator Stevens
7 spent a lot of time on, that, and postal service
8 and some other issues unique to Alaska, so --

9 Q And what other census-related issue did
10 you prepare the nominee -- and when I say the
11 nominee, I mean the nominee Secretary Ross. I'm
12 not talking now about the deputy secretary
13 nominee.

14 A Right. Mostly --

15 Q What are -- I'm sorry. Let me just
16 finish the question for the clarity of the record.

17 What other census-related issues did you
18 prepare future Secretary Ross on in advance of his
19 confirmation hearing?

20 A Largely, the size of the budget, the fact
21 that it had to be conducted based on a certain
22 schedule, and that it would require a large ramp

1 up of personnel.

2 Q And this was because the -- when you say
3 it would require a large ramp up, what would
4 require a large ramp up?

5 A Conducting the census.

6 Q Okay.

7 A You, basically, have to hire about half a
8 million part-time workers.

9 Q Got it.

10 Did you have any discussion with
11 Secretary Ross when he was nominee regarding the
12 citizenship question?

13 A No.

14 Q Okay. And when I say the citizenship
15 question, you understand that I mean the inclusion
16 of a citizenship question on the 2020 census?

17 A I took that to be your meaning, yes.

18 Q Thank you.

19 You mentioned you also were involved as
20 the Sherpa for the deputy secretary nominee?

21 A Correct.

22 Q And tell us about any briefings that you

1 gave the deputy -- the then deputy secretary
2 nominee regarding any Commerce Department matters?

3 A Again, basically, the same subject
4 matter. The Secretary -- the only difference
5 being that the Secretary typically asked more
6 questions than the deputy secretary nominee did.

7 Q Did you brief them -- at the same time or
8 did you brief them in separate meetings?

9 A No. They were on separate tracks.

10 Q And then -- I take it -- you testified
11 you took them up for meetings on the hill.

12 A Correct.

13 Q And did you take the Secretary and the
14 deputy secretary up together or separately?

15 A Separately.

16 Q How many -- how many Hill meetings do you
17 recall going to with the Secretary when he was the
18 nominee?

19 A Well, we met with every member of the
20 committee, so I think that's about -- I don't
21 know -- somewhere in the vicinity of 30. I'd have
22 to go pull the list of the committee -- we met

1 with every member of the committee. We may have
2 met with a couple of them twice if they had
3 follow-up questions.

4 Q And then did you --

5 A And then there were a few members who
6 were -- who had either just rolled off the
7 committee or, obviously, the leader -- you know,
8 leadership, so Leader McConnell and Mr. Schumer
9 are not on the committee, but we, obviously, met
10 with them, as well.

11 Q Okay.

12 A So I don't know, 35 meetings in all.

13 Q Okay. And did you meet with any staff
14 members on the committee outside of staff who
15 would have attended meetings with the senators?

16 A In one case, with Senator Nelson, we met
17 with the staff prior to meeting with the Senator.
18 But, otherwise, yes, the staff was always there
19 with the member.

20 Q Okay. And in any of the meetings that
21 you had with senators or staff during the
22 confirmation process --

1 A Yeah.

2 Q -- did anyone ask you about the
3 citizenship question?

4 A Not that I recall.

5 Q Okay. And did you raise the citizenship
6 question in any of those conversations?

7 A Not that I recall.

8 Q And did the Secretary raise the
9 citizenship question in any of those
10 conversations?

11 A Not that I recall.

12 Q Okay. In any of the meetings that you
13 had with members and the deputy secretary nominee,
14 did any of the members ask you about the
15 citizenship question?

16 A Not that I recall.

17 Q And did you raise the citizenship
18 question with any of the members?

19 A Not that I recall.

20 Q And did the deputy secretary nominee
21 raise the citizenship question with any of the
22 members?

1 A Not that I recall.

2 Q The -- let me go back one second to when
3 you joined the transition team. How did you come
4 to join the transition team?

5 A I was contacted by a former colleague who
6 was tasked with setting up the Sherpa teams.

7 Q Who was that?

8 A Christine Ciccone.

9 Q Can you spell that for the record?

10 A Well, Christine, C-H-R-I-S-T-I-N-E. And
11 then Ciccone, I think is C-I-C-C-O-N-E.

12 Q And you mentioned Christine Ciccone was a
13 former colleague?

14 A Correct.

15 Q Where had you worked together?

16 A She worked as staff on the governmental
17 affairs committee when Senator Stevens was
18 chairman.

19 Q And what was her role on the transition
20 team?

21 A Setting up the Sherpa meetings.

22 Q Okay. So between -- shortly after

1 Thanksgiving and inauguration, your only role on
2 the transition team was as the Sherpa to the
3 Commerce committee?

4 A Right.

5 Q And your only functions as Sherpa to the
6 Commerce committee included the functions that
7 we've just discussed with regard to the
8 Commerce Secretary nominee and the deputy
9 secretary nominee; is that correct?

10 A Right. We were responsible for prepping
11 them for the meetings and assisting with the
12 questions for the record --

13 (Thereupon, the court reporter
14 clarified.)

15 THE WITNESS: Questions for the record
16 that came out.

17 BY MR. COLANGELO

18 Q And --

19 A And hearing prep.

20 Q Great. So let's take those separately.

21 Did you receive any questions for the
22 record -- well, let's do the hearing first.

1 Do you remember when the Secretary's
2 nomination was?

3 A Well, when his nom- -- he was nominated
4 before I came on board, so --

5 Q Okay. If I told you he was nominated on
6 November 30, 2016, would that sound about right?

7 A Yeah. It sounds right.

8 Q And your recollection is you came on
9 board shortly after he was nominated?

10 A It was at the end of November, so he may
11 have been -- they may have brought me on without
12 knowing who it was, but it was right about that
13 time frame.

14 Q Okay. And when was the Secretary
15 confirmation hearing?

16 A It was in early January, I believe.

17 Q Okay. Would January 18, 2017 sound about
18 right?

19 A Yeah. When's the -- the inaugural [sic]
20 is on the 20th --

21 Q Inauguration was on the --

22 A Yeah. Sounds about right. Shortly

1 before the inauguration.

2 Q So you mentioned that you assisted with
3 questions for the record?

4 A Yes.

5 Q Can you describe what questions for the
6 record, are?

7 A Well, in the course off the nomination
8 hearing, many members then send follow-up
9 questions, particularly, Democratic members send
10 follow-up questions. So those -- the typical
11 process for a nominee is in order to get
12 confirmed, you have to complete answering all the
13 information that the committee requests.

14 Q And those questions for the record, I
15 take it those were all submitted after the
16 confirmation hearing?

17 A If I remember right -- and thank you for
18 the reminder that it was on the 18th -- the
19 committee gave the members until, I think it was
20 midnight that night to submit questions for the
21 record, and then we -- the objective was to try to
22 get the questions answered in time that they could

1 be confirmed shortly after the President's
2 confirmation.

3 Q Got it. Okay.

4 A So --

5 Q But you didn't get any questions for the
6 record before his hearing on the 18th, did you?

7 A No.

8 Q And your recollection is that all of the
9 questions for the record, would have come in on
10 the 18th after the hearing?

11 A I think that's correct, yes.

12 Q And you assisted in preparing responses
13 to those --

14 A Correct.

15 Q -- QFRs?

16 A Yes.

17 Q If I say QFRs, will you understand --

18 A I --

19 Q -- I mean questions for the record?

20 A I will. Yes.

21 Q And how did you prepare responses to
22 those QFRs?

1 A Typically, the Secretary would take a
2 first pass at them, and then I would follow in.
3 And if it was a question he really didn't -- was
4 unfamiliar with, then I would try to provide
5 information, run that by him. And if he concurred
6 in the response, we would send that.

7 Q Did you work with any other members of
8 the transition team on the responses to the QFRs?

9 A No.

10 Q Did you work with any members of the
11 Commerce Department -- any employees of the
12 Commerce Department on the responses of the QFRs?

13 A No. Because he was not part -- we
14 were -- I mean, we were in that awkward period
15 where you're transitioned but you're not part --
16 we could ask -- we could send questions, but given
17 the timing, it was highly unlikely that we were
18 going to get a quick response. There were people
19 standing by to try to assist, but we -- there
20 wasn't a very well-defined process for getting
21 that information back and forth.

22 Q Okay. Did you have any interaction with

1 employees at the Commerce Department from the time
2 that you joined the transition team until
3 Inauguration Day?

4 A No. There was pretty large firewalls
5 between the two.

6 Q Okay.

7 A There were a couple members of the
8 transition who were allowed to go in. They were
9 sort of -- I forget when they call them beach head
10 team --

11 Q Uh-huh.

12 A -- but none of them were the same people
13 doing the Sherpa process, so it was a little bit
14 awkward.

15 Q And did any of those QFRs that the
16 Secretary received after his confirmation hearing
17 relate to the citizenship question?

18 A No.

19 Q In the period after his confirmation
20 hearing on January 18th, did you have any
21 discussions with the Secretary about any
22 Commerce Department matters, other than the

1 responses to the QFR?

2 A Other than -- no. I mean, other than
3 basic personnel as he was trying to figure out,
4 you know, who he was bringing on board.

5 Q Okay.

6 A That was all the discussion.

7 Q Okay. So in that period after his
8 confirmation hearing and before he was confirmed,
9 did you have any discussions about policy matters?

10 A No.

11 Q Okay. Did you -- after the confirmation
12 hearing, was there a meeting with the Secretary
13 and the transition team?

14 A I imagine there was, but I don't recall
15 one.

16 Q Okay. So you don't remember
17 leaving the -- leaving the Hill and going to a
18 meeting anywhere in Washington with
19 Commerce Department transition team members?

20 A Not that I recall, no.

21 Q And do you remember, was Wendy Teramoto
22 at that confirmation hearing?

1 A Yes.

2 Q Do you remember a meeting that you and
3 Wendy and the Secretary attended on the 18th after
4 the confirmation hearing?

5 A Not with any particularity, no.

6 Q Okay. Mr. Comstock, tell me what your
7 current position is?

8 A I'm the deputy chief of staff and
9 director of policy.

10 Q Deputy chief of staff and director of
11 policy.

12 When did you become the director of
13 policy?

14 A On January 31st --

15 Q January 31st.

16 A -- 2017.

17 Q The -- was January 31, 2017 your first
18 day in the office at the Commerce Department?

19 A Yes. If I'm recalling correctly, that
20 that was Monday, yes. It was the 30th or 31st.
21 It was whatever the Monday was at the end of
22 January.

1 Q Would it help if I told you that Monday
2 was the 30th?

3 A I'll take your word for it.

4 Q Okay. So your recollection is, then,
5 that --

6 A They start you at the beginning of a pay
7 period is the way it works --

8 Q Okay.

9 A -- in the federal.

10 Q So your first day was January 30, 2017?

11 A Correct.

12 Q So between Inauguration Day on the 20th
13 and the 30th, you weren't physically present at
14 the Commerce Department?

15 A I was not.

16 Q Did you have any conversations with any
17 Commerce Department staff during that time period?

18 A Well -- no. Well, other than the
19 gentleman who was helping with processing my
20 paperwork.

21 Q Personnel onboarding?

22 A Right.

1 Q Other than the personnel onboarding, did
2 you have conversations --

3 A No.

4 Q -- with anyone at the Commerce Department
5 between January 20th and January 30th of 2017?

6 A No.

7 Q Did you have any conversations with
8 Secretary Ross between January 20th and
9 January 30th of 2017?

10 A Nothing particularly that I recall, but
11 I'm sure I talked to him, yes.

12 Q Okay. You mentioned that your title is
13 deputy chief of staff and director of policy.

14 When did you became deputy chief of
15 staff?

16 A In April of this year.

17 Q So from January 30, 2017 until
18 April 2018, you were director of policy?

19 A Correct.

20 Q Is director of policy a position within
21 the Office of the Secretary?

22 A Yes.

1 Q And is that the same as director of
2 policy and strategic planning?

3 A Correct.

4 Q Who do you report to?

5 A The Secretary.

6 Q Directly to the Secretary?

7 A Well, and to the chief of staff and to
8 the deputy secretary.

9 Q Okay. Was there a chief of staff on
10 January 30, 2017?

11 A There was not.

12 Q Okay. So until there was a chief of
13 staff, who would you say you reported to?

14 A Well, until the Secretary came on board,
15 sort of no one.

16 Q Okay.

17 A No. The -- the acting deputy secretary,
18 obviously, was the career official who was in
19 charge of making any final decisions for the
20 department, so --

21 Q And can you identify her for the record?

22 A Ellen Herbst.

1 Q When did the Secretary come on board as
2 Secretary?

3 A Again, I think his confirmation, if I
4 remember right, was the 28th of February. And,
5 again, you'd have to confirm that with records.

6 Q Okay. So between January 30th and
7 February 28th of 2017, you were director of the
8 Office of Policy and Strategic Planning?

9 A Right.

10 Q Notionally, you reported to the chief of
11 staff and the Secretary, but neither of those --

12 A Weren't there.

13 Q -- roles had been filled?

14 A Correct.

15 Q And so you reported to nobody?

16 A Well, no. Again, to the extent that any
17 decisions needed to be made, they were made by the
18 career officials who were there. I would advise
19 those career officials as to what my best guess of
20 administration's policy on a particular matter
21 would be.

22 Q In your position as director of the

1 policy office, how are you assigned work?

2 A Whatever the Secretary decides he wants
3 me to work on.

4 Q Do you have a job description?

5 A Yes. I'm sure there is a job deception.

6 Q Have you seen a job description for that
7 position?

8 A Not that I recall.

9 Q Do you have any regular or standing
10 meetings with the Secretary?

11 A No standing meetings. I meet with him on
12 a daily basis.

13 Q Do you -- is it a scheduled daily
14 meeting?

15 A No.

16 Q So you don't see him at the same time
17 every morning or afternoon?

18 A I do not.

19 Q And the Secretary doesn't have a daily
20 senior staff meeting?

21 A No.

22 Q Are your daily meetings with him

1 scheduled or are they ad hoc?

2 A They're both. I mean, if there's -- if
3 there's a meeting on his schedule for which I have
4 relevant expertise or they would like my advice
5 and counsel, I'm added to that meeting. If
6 there's a meeting we need to have with him because
7 something has come up, then we just -- when he's
8 available, we go meet with him.

9 Q You said if they would like your advice
10 or counsel, who is they?

11 A They meaning the Secretary and chief of
12 staff.

13 Q And can you identify the chief of staff
14 for the record?

15 A The chief of staff currently is
16 Wendy Teramoto.

17 Q And there was no chief of staff in
18 January of 2017?

19 A Correct.

20 Q When did she become chief of staff?

21 A I think she officially became chief of
22 staff in August 2018.

1 Q 2018?

2 A Sorry. 2017.

3 Q So you mentioned you work on whatever the
4 Secretary wants you to work on?

5 A Correct.

6 Q How does he identify matters that he
7 wants you to work on?

8 A He says, Earl, can you get this done? Or
9 we attend this meeting, and he says, can you
10 follow up on that?

11 Q And how do you keep the Secretary
12 informed about what you are doing on important
13 matters or on assignments that he's given you?

14 A By email, by oral briefing, and sometimes
15 by memos.

16 Q How do you decide whether you're going to
17 update Secretary Ross by email, by briefing or by
18 memo?

19 A Just depends on the time frame, the speed
20 of which I need to get something to him, how
21 extensive it is. You know, if there's a lot of
22 information that it would be helpful for him to

1 have and review in advance, then I typically would
2 try to do a memo.

3 Q How big is the policy office?

4 A We currently have six people.

5 Q Six people.

6 And what are those individuals'
7 functions?

8 A Well, the policy office existed prior to
9 my arrival, and it's staffed, essentially, by
10 career -- largely by career staff. So their
11 primary function is to assist me and the Secretary
12 in identifying who can get something done within
13 the department. They also review memorandums and
14 correspondence that comes in from the different
15 bureaus to try to identify if they're -- you know,
16 flag policy issues, flag things they think might
17 be concerning to the Secretary. So they're really
18 an interface to help us figure how to manage the
19 leviathan.

20 Q Manage the leviathan?

21 A Yeah.

22 Q And by leviathan, can you explain what

1 you mean?

2 A The Department of Commerce. It's 47,000
3 people who all report to work every day, and they
4 all do a great job. And when you're trying to
5 figure out what everybody's doing and make sure
6 that what they're doing is consistent with the
7 administration's policy, that's a large task.

8 Q Can you tell me what the professional
9 background is of the six people on your staff in
10 the policy office?

11 A Most of them are detailed from the
12 different departments, so they have some
13 experience or expertise in that particular
14 department.

15 Q Do you have anybody in the policy office
16 detailed from the Census Bureau?

17 A We have somebody from the economics and
18 statistics administration which oversees the
19 Census Bureau.

20 Q You don't have anybody detailed to the
21 policy from the Census Bureau; is that correct?

22 A Not that I'm aware of.

1 Q And is the individual from ESA an
2 economist?

3 A Good question. I don't know.

4 Q Okay. Have you seen the resumes of the
5 people who work in your office and report to you?

6 A No.

7 Q Were all of them there when you became
8 the director of the policy office?

9 A Well, not all the current ones, but, yes,
10 everybody was there that was working for me when I
11 started, yeah.

12 Q I'm not sure I understand that answer.

13 A In other words, they switch. So, for
14 example, the person from NIST has left. I have an
15 Army -- a detailee from the Army logistics command
16 who comes in every year. I'm now on my third
17 person for that job.

18 Q So would it be fair to say that you have
19 six people in the policy office, and those people
20 are details from different bureaus or agencies
21 within the Department of Commerce, and they're on
22 a fixed term and when one person leaves, another

1 person from that bureau comes in?

2 A Essentially, yes. I mean, the fixed term
3 is somewhat flexible. But, for example, the
4 person doing the National Oceanic and Atmospheric
5 Administration has now moved on to be one of the
6 budget directors for them.

7 So it's a position that's seen by the
8 bureaus as something that could be good for
9 leadership development. So they'll send somebody
10 up and they'll work there for a year. The person
11 who did the National Institutes of Standards
12 Technology, NTIA, et cetera, has now moved back to
13 NIST to take a more senior position there.

14 Q And do you have any regular -- strike
15 that.

16 Does the policy office have any regular
17 functions, other than whatever the Secretary wants
18 us to work on?

19 A Well, yeah. Each one of the policy
20 office people is responsible for managing their
21 area, alerting me and the Secretary to issues that
22 are coming up in those particular bureaus. So

1 it's a monitoring function in some ways. And so
2 they're not necessarily developing policy for
3 those bureaus as much as they are keeping track of
4 what the bureaus are doing.

5 Q Okay. Is it unusual for the policy
6 office to develop policy for a bureau?

7 A Not if we're developing for the
8 Secretary, no.

9 Q You just said, I believe, your testimony
10 was --

11 A What I'm saying is the staff that works
12 that --

13 Q I'm sorry. Hang on. Just let me finish
14 my question.

15 Your testimony was, so they're not
16 necessarily developing policy for those bureaus,
17 as much as they are keeping track of what the
18 bureaus are doing?

19 A Correct.

20 Q So is it usual for the policy office to
21 develop policy as opposed to keeping track of
22 policy?

1 A No.

2 Q Please explain.

3 A Well, again, it depends on who you're
4 talking about at the policy office. If you're
5 talking about my staff at the policy office, they
6 do not, as a general rule, develop the policy.
7 The policy is generally developed by the Secretary
8 with input from me and with input from them when
9 needed.

10 Q And not with input from the bureaus?

11 A Well, absolutely. We go back and forth
12 with the bureaus all the time.

13 Q You mentioned that the individuals in the
14 policy office monitor specific areas; is that
15 right?

16 A Correct.

17 Q Do you have somebody assigned to monitor
18 the Census Bureau?

19 A Yes.

20 Q Who is that?

21 A David Langdon.

22 Q And what is David Langdon's background?

1 A He is in the Economic & Statistics
2 Administration and knows -- knows the people down
3 there, knows how to get stuff done, so --

4 Q Okay. And did you hire Mr. Langdon?

5 A I did not.

6 Q Was he in the policy office when you got
7 there?

8 A He was.

9 Q How often do you interact with the
10 Census Bureau?

11 A Directly? Depends on the issue. Like
12 when we were doing the lifecycle cost estimate,
13 quite a bit. When we were doing the census -- the
14 citizenship question, interacted with the staff
15 there -- the senior staff on a fairly frequent
16 basis.

17 Q Do you have any standing meetings with
18 the Census Bureau?

19 A No. Well, other than when they come and
20 brief the Secretary sort of on a monthly basis,
21 I'll attend those meetings.

22 Q Okay. I'll come back to the monthly

1 briefings in a minute.

2 In your job as director of policy, do you
3 a -- have any role with regard to interacting with
4 the White House?

5 A Sure. I'm the primary person that gets
6 contacted when they've got a document they're
7 trying to circulate and clear.

8 Q When the White House has a document
9 they're trying to circulate and clear?

10 A Correct.

11 Q Okay. And so who would contact you in
12 the course of circulating and clearing a document?

13 A Staff Secretary.

14 Q And what kind of documents would be
15 circulated and cleared through the Commerce
16 Department from White House?

17 A Op eds, presidential memorandums,
18 executive orders.

19 Q And how often does the White House ask
20 you to clear a document?

21 A Sometimes I get to clear multiple
22 documents in a day.

1 Q So daily?

2 A Yes.

3 Q Okay. And when you get a document from
4 the White House to clear, what do you do?

5 A I usually send it off to the affected
6 bureaus and ask for their input.

7 Q And how much turnaround time do you
8 typically have if you get a document from the
9 White House to clear?

10 A It ranges from less than two hours to a
11 week and a half.

12 Q And --

13 A Typically, in that ballpark.

14 Q And when you get a document from the
15 White House to clear, how is it transmitted to
16 you?

17 A By email.

18 Q From the Office of the Staff Secretary?

19 A Yeah.

20 Q Is it ever transmitted to you directly
21 from a policy office within the White House?

22 A I'm not sure what you mean.

1 Q Would you get a document from the
2 Domestic Policy Council directly or from the
3 National Economic Council directly, or would you
4 always get a document from --

5 A If we were working on something and
6 there's something relevant that they would need to
7 send it, sure.

8 Q So you get documents to clear from the
9 White House and they can come from either the
10 Staff Secretary or from another office within the
11 White House?

12 A Sure. I mean, to give you an example,
13 working on the steel proclamation, having to do
14 with Section 232 tariffs, there's all kinds of
15 interaction back and forth with the White House,
16 White House -- Office of White House Counsel, NEC,
17 CEA. I mean, it just depends on who's working on
18 an issue.

19 Q And for the record, can you say what CEA?

20 A Counsel of Economic Advisors.

21 Q And, for the record, can you say what
22 NEC?

1 A National Economic Council.

2 Q Great.

3 Did you have any interaction with the
4 White House on the census citizenship question?

5 A No.

6 Q Did you have any interaction with the
7 White House on the Census Bureau, at all?

8 A Not that I recall.

9 Q What is your typical -- do you have any
10 typical role with regard to interacting with other
11 cabinet agencies?

12 A Again, if there's an issue that the
13 Secretary is working on and we're trying to
14 communicate with the other departments, I'll often
15 be asked to track down somebody in the other
16 department to whom we can have a conversation.

17 Q So, yes, you do typically have a role
18 interacting with other cabinet agencies?

19 A Yes.

20 Q On -- is that role on policy matters --

21 A Yes.

22 Q -- exclusively?

1 A I'm not sure what you mean by
2 exclusively.

3 Q Budget, legal --

4 A Yeah.

5 Q -- any other --

6 A I mean, we talk all the time with OMB,
7 for example, on our budget. I'm involved in that.
8 Involved in strategic planning for the department.
9 You know, we were working on a revision to a sugar
10 agreement which involved a lot of interaction with
11 the Department of Agriculture, so dealt heavily
12 with Secretary Perdue and his senior staff on that
13 matter. Just depends on the issue.

14 Q And do you have -- in your role as
15 director of the policy office, do you have typical
16 interaction with Congressional staff?

17 A On occasion, yes.

18 Q How much would you say you interact with
19 Congressional staff?

20 A Well, depending on the issue, sometimes
21 quite frequently. Sometimes -- usually, it's
22 often when either their office -- like, for

1 example, on steel tariffs, we've had quite a bit
2 of interaction with Chairman Brady and his staff,
3 senior staff on the Ways and Means Committee would
4 call frequently. On a red snapper issue, the
5 staff of Mr. Scalise called. So it just depends
6 on the issue.

7 Q Did you have any interaction with
8 Congressional staff on the citizenship question?

9 A I did not.

10 Q Are you aware of anyone in the
11 Commerce Department who did have interaction with
12 Congressional staff on the citizenship question?

13 A Not that I recall.

14 Q Do you interact, at all, with members of
15 Congress in your role as the director of policy?

16 A I do on occasion, yes.

17 Q Did you interact with any members of
18 Congress on the citizenship question?

19 A I did not.

20 Q Is it typical in your function as
21 director of the policy office to interact with
22 outside stakeholders and nongovernmental

1 stakeholders?

2 A I take meetings when the Secretary can't,
3 yes.

4 Q Do you ever take meetings independent of
5 filling in for the Secretary?

6 A Yeah, on major policy issues I'm working
7 on.

8 Q Did you meet with outside stakeholders on
9 the citizenship question?

10 A No.

11 Q You didn't attend any meetings, including
12 with the Secretary, on the citizenship question --

13 A I --

14 Q -- with outside stakeholders?

15 A With the outside stakeholders groups, no.

16 Q When did you first hear about the notion
17 of adding a question about citizenship to the
18 decennial census?

19 A Sometime in -- shortly after the
20 confirmation.

21 Q And who did you hear it from?

22 A The Secretary.

1 Q And the Secretary was confirmed on
2 February 28, 2017; is that right?

3 A I -- like I said, you'd have to confirm
4 that date, but I think that was the date, yes.

5 Q And what did the Secretary tell you about
6 the idea of adding a question on citizenship to
7 the census during that first conversation shortly
8 after his confirmation?

9 A Again, the exact time frame of the
10 conversation, I can't tell you. It was sometime
11 in that spring period. I don't recall the
12 details. I think he simply inquired as to why
13 don't we have a citizenship question on the
14 census.

15 Q Okay. And what did you say to him when
16 he inquired?

17 A Short answer, I don't know. I'll check.

18 Q Okay. And would that interaction be
19 reflected in any documents?

20 A I don't -- I don't believe so, but it's
21 possible it's in an email exchange.

22 MR. COLANGELO: Can we mark as Exhibit 1,

1 Comstock Exhibit 1?

2 (Plaintiffs' Exhibit 1, Email, was
3 marked.)

4 MR. COLANGELO: I'm handing counsel
5 Document Bates-stamped 1410.

6 BY MR. COLANGELO:

7 Q And I'll hand the document to the
8 witness.

9 A Thank you.

10 Q Mr. Comstock, let me take that back and
11 I'll give you the marked copy.

12 Mr. Comstock, have you seen this email
13 before?

14 A Let's see it. It doesn't appear I was
15 copied on it, so, no.

16 Q And you weren't shown this email in
17 preparation for your deposition?

18 A No.

19 Q Okay. And this is an email from
20 David Langdon to Ellen Herbst dated
21 February 22, 2017; is that right?

22 A Correct.

1 Q And you testified that David Langdon
2 works for you in the policy office; is that right?

3 A Correct.

4 Q And Ellen Herbst at the time was the
5 acting deputy secretary; is that right?

6 A Right.

7 Q Do you see in this email where
8 Mr. Langdon asks Ms. Herbst who is organizing the
9 Census Bureau briefing for Earl and team?

10 A Yeah.

11 Q Okay. And take a look at the subject
12 line, "Census Bureau briefing for OS politicals."

13 Does OS stand for Office of the
14 Secretary?

15 A Yes.

16 Q Now, in the second paragraph of this
17 email, you see the line where Mr. Langdon says,
18 "Jim S. reminded me about the upcoming
19 Congressional notification of decennial census and
20 ACS topics and the need to gauge Earl's interest
21 in it." I believe he meant Earl's interest in it.

22 Do you see that line?

1 A I see it, yes.

2 Q And I take it that you would assume that
3 Earl refers to you?

4 A I'm not aware of another Earl that works
5 at the department at the moment, so --

6 Q Okay. Certainly, not another Earl that
7 works at the Office of Secretary who's a political
8 appointee?

9 A Correct.

10 Q And then Mr. Langdon then says, "Earl is
11 very" -- underlined very -- "interested and thinks
12 the Secretary will be, as well."

13 Do you see that?

14 A Yes.

15 Q On February 2nd of 2017 would have been
16 your fourth day on the job; is that right?

17 A Yep.

18 Q Okay. And do you recall telling
19 Mr. Langdon that you were very interested in
20 Congressional notification of decennial ACS
21 topics?

22 A I recall telling him that we were very

1 interested in the census and getting a briefing on
2 it.

3 Q Okay.

4 A I don't specifically recall that, but --

5 Q Were you very interested in the decennial
6 topics on February 2, 2017?

7 A What probably would have caught my
8 attention is if we had to notify Congress about
9 something, I would want to make sure we were up to
10 speed on what we needed to notify them about.

11 Q As of this date, February 2, 2017, do you
12 recall if you had already had discussions
13 regarding adding a citizenship question to the
14 census?

15 A I don't recall having a discussion before
16 that.

17 Q Mr. Langdon's email says, quote, it would
18 make sense for John Thompson to touch on this
19 topic in his overview briefing and then to have a
20 follow-up briefing very soon.

21 Was Mr. Thompson the Census Bureau
22 director at the time?

1 A Yes.

2 Q And did that overview briefing take place
3 that's referred to in this email?

4 A I imagine it did.

5 Q Do you remember when that happened?

6 A I couldn't tell you.

7 Q Do you keep a calendar?

8 A Yeah. There's an electronic calendar
9 somewhere.

10 Q And your calendar records the meetings
11 that you attend?

12 A Generally, yes.

13 Q Would it typically record a meeting with
14 the Census director?

15 A It would depend if somebody sent me a
16 calendar invite.

17 Q Would somebody typically send you a
18 calendar invite for a meeting with the Census
19 director?

20 A At that point in time, possibly. Yeah, I
21 don't know.

22 Q The email refers, also, to a follow-up

1 briefing very soon. Do you remember that
2 follow-up briefing?

3 A I don't have any specific recollection of
4 that, no.

5 Q If there was a follow-up briefing on the
6 question of Congressional notification of
7 decennial topics, would that be reflected in your
8 calendar?

9 A Again, possibly. But unless I entered it
10 myself, which I may or may not have done, I don't
11 know.

12 Q Do you have an assistant who adds
13 meetings to your calendar?

14 A I do now, but I didn't then.

15 Q When did your assistant start?

16 A I think I finally got an assistant in
17 May, maybe.

18 Q Okay. And before May, is it your
19 testimony that meetings didn't appear on your
20 calendar unless you put them there or somebody
21 sent a calendar invite to you?

22 A Correct.

1 Q We'll mark this exhibit Comstock
2 Exhibit 2.

3 (Plaintiffs' Exhibit 2, Email, was
4 marked.)

5 BY MR. COLANGELO:

6 Q We are marking as Comstock 2 Document
7 Bates numbered 2521.

8 Mr. Comstock, take a look at this email.
9 You've seen this email before, right?

10 A I sent it.

11 Q So that's a yes?

12 A Yes.

13 Q Were you shown this email in preparation
14 for your deposition today?

15 MR. GARDNER: I'm going to object and
16 instruct the witness not to answer on the grounds
17 of attorney work product.

18 I'm happy to let you answer when was the
19 last time you saw the document.

20 But you're asking about documents counsel
21 may have shown that would be protected.

22 BY MR. COLANGELO:

1 Q When's the last time you saw this
2 document, Mr. Comstock?

3 A Yesterday.

4 Q And do you see the subject line of this
5 email is your question on the census?

6 A Yep.

7 Q Okay. And Secretary Ross was confirmed
8 on February 28th, I think we agreed; is that
9 right?

10 A Like I said, if that's the date, yes.

11 Q Okay. So this would have been
12 Secretary Ross's eleventh day on the job as
13 Commerce Secretary, give or take?

14 A Approximately, yes.

15 Q And the subject line of this email is
16 your question on the census?

17 A Right.

18 Q What was the Secretary's question on the
19 census?

20 A He appeared to have asked whether
21 undocumented people were counted in the census.

22 Q Okay. And how did he ask you that

1 question?

2 A I don't recall. Probably at a meeting,
3 possibly following up on a census briefing. I
4 don't know.

5 Q Have you checked your calendar for
6 March 10, 2017 recently?

7 A I was going to say I probably haven't
8 checked it from March 10, 2017 for that particular
9 date.

10 Q Okay.

11 A By the way, I wanted to add one point.
12 On the prior document, you need to understand that
13 at that time, there were a number of questions
14 that the prior administration had requested be
15 placed, potentially, on the census that would have
16 been involved in that notification. So that would
17 have been a reason of why I would have been
18 interested in that, on sexual orientation and
19 gender identity. So that was an issue that was
20 very at the forefront at the time of what to do
21 about those requests.

22 Q So let's go back to Exhibit 2, your email

1 to Secretary Ross on Friday, March 10th. Do you
2 know why the Secretary asked you whether
3 undocumented people were counted?

4 A I have no idea.

5 Q Okay. Did he ask you whether noncitizen
6 people were counted for apportionment purposes?

7 A Well, based on the answer, it appears he
8 might have.

9 Q Appears he might have or appears he did?

10 A I couldn't tell you the answer on that.

11 Q Okay.

12 A I don't recall the question, so --

13 Q Okay. But you sent this email to the
14 Secretary in response to a question?

15 A Yes.

16 Q And you would have presumably tried to
17 make your answer responsive to his question?

18 A I generally do that, yes.

19 Q So you think it's likely that his
20 question was about whether undocumented immigrants
21 were counted for apportionment purposes?

22 A That's entirely possible, but he might

1 have also just asked do we count undocumented
2 persons, and this is what I found on the Census
3 website.

4 Q How do you think you found it on the
5 Census website?

6 A By typing in census and going to their
7 website and seeing what their FAQs say.

8 Q So you think you would have gone directly
9 to the frequently asked questions page?

10 A That would not be unusual for me to do,
11 yes.

12 Q This link you've identified at
13 www.census.gov, that's the Census Bureau's
14 frequently asked web page for Congressional
15 apportionment; is that right?

16 A Again, without pulling it up, I couldn't
17 tell you specifically what it says.

18 Q Okay. If I represent to you that if you
19 pulled up that website, it would say frequently
20 asked questions for Congressional apportionment,
21 would that assist you?

22 A I'd be happy to take your word for it.

1 Q So does that assist you in recalling that
2 the Secretary asked whether noncitizens were
3 counted for apportionment purposes?

4 A And I have no recollection of the
5 question, so I can only go by the answer.

6 Q Okay. The email also includes a blog
7 post from the Wall Street Journal; is that right?

8 A Uh-huh.

9 Q Okay. And your email to the Secretary
10 says that this blog post, quote, confirms that
11 neither the 2000s, nor the 2010 census asked about
12 citizenship?

13 A Correct.

14 Q So does that lead you to conclude that
15 the Secretary asked about whether the decennial
16 census asks about citizenship?

17 A That would be a reasonable supposition,
18 based on the response.

19 Q And this blog post is called the pitfalls
20 of counting illegal immigrants; is that right?

21 A Yep.

22 Q And were you concerned on March 10, 2017

1 about counting illegal immigrants?

2 A I -- no, not personally.

3 Q Was the Secretary concerned on
4 March 10, 2017 about counting illegal immigrants?

5 A Again, I have no recollection of the
6 question, so I couldn't speculate as to what his
7 concern was.

8 Q But you testified that a significant part
9 of your job function involves answering questions
10 from the Secretary on issues that matter to him,
11 right?

12 A Correct.

13 Q And if he asked you a question, you would
14 try to be responsive?

15 A Generally, yes.

16 Q You wouldn't ordinarily send him
17 information that wasn't responsive to a question
18 he asked, would you?

19 A Not -- not characterized this way, no.

20 Q So you testified a minute ago that the
21 Secretary -- that you first heard about the notion
22 of adding a question about citizenship to the

1 census when the Secretary raised it with you
2 shortly after his confirmation. Does this email
3 indicate to you that it was by March 10th that the
4 Secretary first raised it with you?

5 A I wouldn't necessarily draw that
6 conclusion from this email.

7 Q Would you draw the conclusion that it was
8 later than March 10?

9 A No, I wouldn't. Again, this -- this
10 question does not directly address -- it's a
11 question about how -- who do we count, not whether
12 or not -- and whether there's a citizenship
13 question. So I don't know at this point whether
14 he indicated he was interested in such a question,
15 other than getting the factual information.

16 Q Okay. Who would know when the Secretary
17 was interested in adding a citizenship question?

18 MR. GARDNER: Objection. Calls for
19 speculation.

20 BY MR. COLANGELO:

21 Q You can answer.

22 A My counsel just objected, so why can --

1 would I answer?

2 Q So let me -- an additional ground rule
3 that I -- let's cover one additional ground rule.
4 I will ask questions and your job is to answer
5 them fully and truthfully.

6 A Okay.

7 Q Your counsel may state objections if he
8 finds my questions objectionable for a range of
9 reasons. If he states an objection, you can,
10 nonetheless, answer the question unless he
11 instructs you not to answer.

12 Do you understand?

13 A Well, you used the word "can," which
14 means that I have the discretion.

15 Am I instructed to answer the question
16 notwithstanding his objection or is it -- should I
17 follow my counsel's objection?

18 MR. GARDNER: You should do your best to
19 answer the question posed to the extent you
20 understand.

21 THE WITNESS: Thank you for the
22 clarification.

1 Again, you'd have to ask the Secretary.

2 BY MR. COLANGELO:

3 Q The -- the -- let's go back to Exhibit 2,
4 subject line, your question on the census, and
5 tell me how the Secretary's question was
6 communicated to you?

7 A It appears orally.

8 Q Okay. Why do you say it appears orally?

9 A Well, we did a very extensive email
10 search, including the Secretary's email, and so if
11 you don't have an email from him to me asking
12 about this, and normally I would reply back if he
13 had sent me an email asking me about this. So,
14 therefore, I would conclude that it was oral.

15 Q Okay. And you don't recall -- strike
16 that.

17 Was that oral question in a meeting, on
18 the telephone? How do you remember receiving that
19 question?

20 A I have no recollection.

21 Q Okay. Your email says -- let me direct
22 you to the first line of your message to the

1 Secretary. Quote, I was not able to catch anyone
2 at their desk when I called the numbers I have for
3 the Census Bureau from their briefing.

4 Do you see that?

5 A Yep.

6 Q Which briefing are you referring to?

7 A Apparently a briefing that we had with
8 Census.

9 Q A briefing that you and the Secretary
10 both had with the Census?

11 A Right.

12 Q Were you given any materials at that
13 meeting?

14 A Quite possibly.

15 Q And was that briefing on March 10th?

16 A I have no idea.

17 Q Okay. If you -- if you -- would that
18 briefing be reflected on your calendar?

19 A Again, it's possible. I -- I don't know.

20 Q Okay. Would it be reflected on the
21 Secretary's calendar?

22 A Most likely, yes.

1 Q He does keep a calendar, correct?

2 A Well, he has somebody that keeps a
3 calendar for him, yes.

4 Q And he had an assistant as of the day he
5 started as Commerce Secretary, I assume?

6 A Correct.

7 Q Mr. Comstock, you sent your email to the
8 Secretary on a Friday night after 8:30 p.m.; is
9 that right?

10 A That appears to be the date stamp on
11 here, yes.

12 Q Okay. And you sent it after you couldn't
13 reach Census Bureau staff at their desks; is that
14 right?

15 A Shocking at 8:30 that I could not reach
16 them at their desk, yes.

17 Q So you got a question from the Secretary
18 at the end of the work day; is that right?

19 A Quite possibly.

20 Q Was his question urgent?

21 A Again, I don't know. I don't recall when
22 he asked me, and so this could have been something

1 I was catching up on at the end of the day. It
2 could have been something that he had just called
3 me on the phone about.

4 Q Okay. Who is Eric Branstad?

5 A Eric was the senior White House advisor
6 at the time.

7 Q Tell me what senior White House advisor
8 is.

9 A It's a position that basically helps
10 with -- largely, with personnel coming over and
11 also, ideally, was keeping us informed on what was
12 going on at the White House side of things.

13 Q Is that the political appointee position?

14 A Yes, it is.

15 Q You said Mr. Branstad was the --

16 A Right.

17 Q -- senior White House advisor at the
18 time?

19 A Correct.

20 Q Is he no longer in that role?

21 A That's correct.

22 Q Does he work at the Commerce Department

1 anymore?

2 A No. He does not.

3 Q Do you know when he left the
4 Commerce Department?

5 A I think it was last spring. I think he
6 worked there about a year.

7 Q Why did you copy Mr. Branstad on this
8 email to the Secretary at 8:30 at night on a
9 Friday about the census and citizenship?

10 A Because Eric was the, quote, senior
11 political in the department at the time.

12 Q He was the senior political in the
13 department at the time, okay.

14 Had Wendy Teramoto started in the office
15 at that point?

16 A She had not.

17 Q Was Mr. Branstad in the Census Bureau
18 briefing with you?

19 A I have no idea.

20 Q Did he -- tell me a little bit more about
21 what you mean by he was the senior political in
22 the Commerce Department at the time?

1 A He was somebody who had worked on the
2 campaign and the transition and had been brought
3 over as part of that. And so he was one of
4 the -- there's a small group of folks that had
5 been -- you know, the new politicals that had come
6 in, and he was one of them and was -- not only the
7 senior person in the group.

8 Q And did you generally keep him updated on
9 anything that you would have been working with the
10 Secretary on?

11 A Most likely, yes.

12 Q Do you recall whether he was present when
13 the Secretary asked you the question that you were
14 responding to?

15 A I have no idea.

16 Q Okay. Did he assist with the Secretary's
17 confirmation?

18 A No.

19 Q Okay. Was anyone else on the transition
20 team -- strike that.

21 Did anyone else on the transition team
22 assist you in your function as confirmation

1 Sherpa?

2 A Yes, Israel Hernandez.

3 Q Anyone else?

4 A Nope.

5 Well, I mean, we had a press person, as
6 well.

7 Q Who is the press person?

8 A You're going to tax my memory here.
9 Really nice fellow, but he didn't come over
10 so -- unfortunately, I can't recall his name, but
11 we'd be happy to provide it.

12 Q Okay.

13 A If you -- there's a -- there's a -- I
14 think it's a Washington Post picture that has the
15 group, and he's sitting there, but we'll get you
16 the name.

17 Q Thanks.

18 Was Mr. Branstad working on Census Bureau
19 issues in March of 2017?

20 A Not that I recall, no.

21 Q Did you discuss the census citizenship
22 question with him outside of this email in

1 March of 2017?

2 A Again, not that I recall.

3 Q Let me direct you to the highlighted line
4 about three-quarters of the way down on the page
5 that is stamped 2521 -- and we apologize for the
6 copy quality.

7 A I was going to say --

8 Q This is how the document --

9 A Think you highlighted it so nobody could
10 read it.

11 Q -- was produced to us.

12 A So this is not a redaction is what you're
13 telling me?

14 Q Correct. This is not a redaction.

15 A If you can tell me what it says, I'd be
16 happy to --

17 Q Sure. The highlighted line says, "No
18 major government survey, including the decennial
19 census now underway, asks Americans about their
20 citizenship status."

21 And you see that this blog post is dated
22 May of 2010, correct?

1 A Uh-huh.

2 Q So the decennial census now underway, do
3 you understand we refer to --

4 A Would have been the 2010, yeah.

5 Q Remember to please wait for me to finish
6 my question before you answer.

7 A Sure.

8 Q Did you highlight this line?

9 A Well, unless you did, then I'm assuming I
10 did.

11 Q I can represent to you we did not
12 highlight this line.

13 A Okay. Then I will assume that it was
14 highlighted in the email.

15 Q And why did you highlight this line of
16 the blog post before sending it to the Secretary?

17 A Well, it appears that the question was
18 whether or not the citizenship question had been
19 asked, at least on the 2010 census, and so I'm
20 highlighting for him where in this article, so he
21 doesn't have to read the whole thing that I found
22 the information responsive to his question, which

1 is a statement by somebody in Wall Street Journal,
2 which is, you know, in some circles considered a
3 reasonably accurate paper. Stating that it was
4 not collected in the 2010 census.

5 Q Okay. And take a look -- let's do that
6 again. We had some interference from the
7 conference line.

8 Take a look at the second page of
9 Comstock Exhibit 2. This is the page marked 2522.

10 A Yep.

11 Q And, again, about two-thirds of the way
12 down the page, there's another highlighted line.

13 Do you see that?

14 A I -- yep.

15 Q I'll represent to you this line was
16 highlighted as the documents were produced to the
17 plaintiffs in this lawsuits. We did not
18 highlight.

19 A Okay.

20 Q That line reads --

21 A I can't read what it says.

22 Q -- "Many more foreign-born residents were

1 counted in 2000 than was expected based on annual
2 estimates produced by the Bureau."

3 Do you see that line?

4 A Yep. I'm -- I see the highlighted line,
5 but I'm taking it at your word that that's what it
6 says.

7 Q Okay. The -- do you know why you
8 highlighted that line when you sent this blog post
9 to the Secretary?

10 A Again, it would appear to indicate that
11 the census may have underestimated the number of
12 undocumented folks.

13 Q Okay. So you told me that the Secretary
14 first raised the idea of adding a citizenship
15 question to the census shortly after he was
16 confirmed. You've testified that on March 10th,
17 you emailed him information showing that
18 undocumented residents are included in the
19 apportionment counts. You've testified on
20 March 10th, you emailed him a blog post from the
21 Wall Street Journal highlighting a line that no
22 major government survey asks American's about

1 their citizenship status.

2 Does that help you remember when the
3 Secretary first expressed interest in adding a
4 citizenship question to the decennial census?

5 A No.

6 Q And does that help you remember that it
7 was no later than March 10th that the Secretary
8 first asked you that question?

9 A Again, you're speculating as to when he
10 asked. But he appeared to have inquired about
11 some relevant aspects of it --

12 Q Okay.

13 A -- on March 10th.

14 Q We'll mark this Comstock Exhibit 3. And,
15 Mr. Comstock, is being handed Document Bates stamp
16 3685.

17 (Plaintiffs' Exhibit 3, Email, was
18 marked.)

19 BY MR. COLANGELO:

20 Q Mr. Comstock, do you have Exhibit 3 in
21 front of you?

22 A I do.

1 Q And this is an email from David Langdon
2 to you on March 10, 2017; is that right?

3 A That's correct.

4 Q Looks like this email was sent at
5 7:50 p.m. on March 10th; is that right?

6 A That appears to be correct, yes.

7 Q And this was the same night you emailed
8 the Secretary in response to, quote, your question
9 on the census, unquote; is that right?

10 A Yeah. Yes.

11 Q Have you seen this email before?

12 A I would assume, since it was sent to me.

13 Q When's the last time you saw this email?

14 A Probably at 7:51 p.m. on March 10th.

15 Q Okay. Why did Mr. Langdon send you this
16 email on the evening of March 10?

17 MR. GARDNER: Objection. Calls for
18 speculation.

19 BY MR. COLANGELO:

20 Q You can answer the question.

21 A Well, again, as I mentioned earlier,
22 there was -- we'd been told there was a

1 notification process that needs to go to Congress.
2 And when you're not familiar with the details of
3 this, one of the first things you do in my kind of
4 position is try to get your arms around, okay,
5 what are the things that have to happen?
6 Particularly, what are the things that might
7 prevent you from being able to make a policy
8 change? And so when you're told we have to notify
9 Congress about something at a certain time, that
10 then becomes a deadline we have to decide if we
11 need to take any action prior to. And in this
12 case, there were a lot of other things potentially
13 being added to the census that it was not clear
14 that the administration was aligned with the prior
15 administration on, including a question having to
16 do with breaking out Middle Eastern North Africa
17 [sic] people the so-called MENA question. There
18 was the sexual orientation/gender identity
19 questions. So there was an ongoing process to try
20 to decide what, if anything, to do about these
21 sort of pending things that were basically held
22 over from the prior administration.

1 Q Okay. So --

2 A So I expect that's probably what Dave was
3 emailing me about.

4 Q And was David in the conversation that
5 you had with Secretary -- with Secretary Ross
6 earlier that day about the census?

7 A I have no idea, because I don't recall
8 the conversation.

9 Q And you don't recall telling him about
10 that conversation?

11 A I don't, no.

12 Q Do you recall asking him to set up a
13 briefing on that day?

14 A I -- it's entirely possible I did. I
15 have no idea.

16 Q Okay. Do you think it's likely that it
17 was a coincidence that on the same day you were
18 emailing the Secretary about his question on
19 whether noncitizens were included for
20 apportionment purposes, that your employee was
21 scheduling a briefing for you on the 2020 census
22 topics?

1 A I think there's not, necessarily, linkage
2 between the two. As I mentioned before, there
3 were other things happening with respect to the
4 census. We were also trying to get our arms
5 around the budget of the census, all of which
6 would be entirely plausible reasons why we would
7 schedule a briefing.

8 Q And you mentioned one of the reasons you
9 wanted, in general, to be briefed on Congressional
10 notifications of the 2020 census topics was so
11 that you had time to make policy decisions that
12 the administration might support; is that right?

13 A No. To make sure we were -- had time to
14 make any changes that needed to be made, based on
15 prior administration recommendations that we knew
16 were still pending.

17 Q Okay. And those prior recommendations
18 were the sexual orientation and gender identity
19 question and Middle Eastern North African issue;
20 is that right?

21 A Those were two that I recall, yes.

22 Q Do you recall also being concerned at

1 this time about having enough time to add
2 citizenship as a topic on the Congressional
3 notification?

4 A I don't recall that being a concern at
5 the time.

6 Q Let's have this marked as Comstock
7 Exhibit 4.

8 (Plaintiffs' Exhibit 4, Email, was
9 marked.)

10 BY MR. COLANGELO:

11 Q Handed the witness a document stamped
12 3686. And we've marked this as --

13 MR. COLANGELO: Is that Exhibit 4?

14 BY MR. COLANGELO:

15 Q Do you have Exhibit 4 in front of you,
16 Mr. Comstock?

17 A I do.

18 Q And this is an email from David Langdon
19 to you, Ellen Herbst and Dennis Alvord, is that
20 how you pronounce his name?

21 A Yeah, Dennis Alvord.

22 Q Dennis Alvord.

1 Dated March 15th; is that right?

2 A Yes.

3 Q Of 2017?

4 A Yeah. We did a lot late at night.

5 Q So it seems.

6 Have you seen this email before?

7 A Again, apparently, if it was to me, yes,
8 I probably saw it sometime around the 15th of
9 March, 2017.

10 Q Do you recall seeing this email since the
11 15th of March, 2017?

12 A Absolutely not.

13 Q And this is an email from Mr. Langdon to
14 you and Ms. Herbst that says, quote, I'd like to
15 schedule a Census Bureau briefing on the 2020
16 census and ACS topics before the Census Bureau
17 does its Hill notifications on March 31st.

18 Do you see that?

19 A Yeah.

20 Q And then he goes on to say the goal is
21 for all to be on the same page for the
22 notification process for the topics this year and

1 questions next year.

2 Do you see that?

3 A Yeah.

4 Q So Mr. Langdon is trying to schedule a
5 briefing before the Census Bureau notifications to
6 the Hill, correct?

7 A Yes.

8 Q And was this in follow-up to the
9 March 10th email we just discussed?

10 A Again, I have no recollection of this
11 exchange, but it appears to be likely, yes.

12 Q Okay. Did the briefing that Mr. Langdon
13 was trying to schedule for you take place?

14 A No idea.

15 Q Would that be reflected on your calendar
16 if it did?

17 A It's possible.

18 Q The Census Bureau is not in the same
19 building that you work in; is that right?

20 A That's correct.

21 Q Okay. In fact, are they in the
22 District of Columbia or are they in Maryland?

1 A I think they're actually just across the
2 line in Maryland.

3 Q Okay. And when you are briefed by
4 Census Bureau officials, are you typically briefed
5 in person or by telephone or in some other way?

6 A Typically, they come over en masse and we
7 have a briefing in the Secretary's conference
8 room.

9 Q Okay.

10 A Or another conference room.

11 Q Does the Secretary's conference room have
12 its own calendar?

13 A Good question. I don't know.

14 Q In order to make sure that meetings
15 aren't double booked?

16 A I'm -- somebody may well maintain a
17 calendar. I have no idea.

18 Q But, typically, when you meet with
19 Census Bureau officials, you meet with them in
20 person, right?

21 A Typically, yes.

22 Q And they aren't in the same building as

1 you, they're coming from somewhere else, right?

2 A Correct.

3 Q They come over en masse. By that, do you
4 mean there's more than one of them?

5 A Typically, yes.

6 Q How many people typically come over from
7 the Census Bureau?

8 A Well, a lot of the briefings have 15 or
9 20 people in them.

10 Q Okay. So would you typically invite 15
11 or 20 people to come over en masse from Maryland
12 to meet with you in person and not include it on
13 your calendar?

14 A I wouldn't have normally scheduled the
15 meeting, so -- again, I would -- I might have it
16 on my calendar if there's an invite, but I'm
17 not -- I do a lot of meetings that I'm just pulled
18 into, so I don't worry about putting them on a
19 calendar.

20 Q But if people are coming from outside the
21 building to meet with you on an important issue,
22 you'd want to make sure you were available, right?

1 A Depends. I mean, if the Secretary's
2 schedule interrupts that, then I'm not available,
3 so --

4 Q Okay. So you don't remember if this
5 briefing happened?

6 A I don't recall a particular briefing, no.

7 Q Okay. When the Census Bureau comes over
8 en masse to meet with you in person, do they
9 typically bring or send you materials?

10 A Sometimes they email things, yeah.

11 Q Not always?

12 A No. I mean, as you notice, Ellen, who is
13 the deputy secretary, would be the person they'd
14 be coming to brief. I would simply be an attendee
15 at the meeting. So if I didn't show because
16 something else conflicted on my schedule, then the
17 meeting would occur any way, and that would be
18 that.

19 Q Okay. Take a look -- do you still have
20 Exhibit 3 in front of you?

21 A Yes.

22 Q Okay. Let's go back to Exhibit 3. This

1 is David Langdon asking you what your schedule --

2 A Right.

3 Q -- looks like to receive a briefing on
4 the 2020 census --

5 A Right.

6 Q -- and ACS topics; is that right?

7 A Correct.

8 Q So is it your understanding that he was
9 briefing the acting deputy secretary or that he
10 was arranging everything for you?

11 A Again, I have no recollection of this
12 exchange. So it's entirely possible that this
13 briefing in the 3/10 email and briefing in the
14 3/15 email are one in the same or they could be
15 different. I don't know.

16 Q Okay. Let's mark this Comstock 5. This
17 is document Bates -- the witness has been handed
18 Comstock Exhibit 5 stamped 1321.

19 (Plaintiffs' Exhibit 5, Memo, was
20 marked.)

21 BY MR. COLANGELO:

22 Q Mr. Comstock, do you have Exhibit 5 in

1 front of you?

2 A I do.

3 Q Have you seen this document before?

4 A I have.

5 Q When's the first time you saw this
6 document?

7 A Probably when we reviewed a draft in the
8 Justice Department.

9 Q Okay. When was that?

10 A I couldn't tell you the date.

11 Q Was it near in time to the date below
12 Secretary Ross's signature, which is June 21,
13 2018?

14 A I'd say that's likely, yes.

15 Q When's the last time you saw this
16 document?

17 A Right now.

18 Q When's the last time before right now
19 that you saw this document?

20 A I think maybe yesterday. I can't recall.

21 Q Okay. Did you draft this memo?

22 A I did not draft this memo, no.

1 Q Did you assist in drafting this memo?

2 A I provided some edits to this memo.

3 Q Okay. Who else assisted in providing
4 edits to the memo?

5 A The Office of General Counsel.

6 Q Who in the Office of General Counsel?

7 A I believe Mike Walsh.

8 Q Anyone else?

9 A There may have been other counsel. I
10 don't know.

11 Q Did Peter Davidson provide edits to this
12 memo?

13 A It's entirely possible he did.

14 Q Did James Uthmeier provide edits to this
15 memo?

16 A It's possible, yes.

17 Q The second sentence of this memo says,
18 "Soon after my appointment as Secretary of
19 Commerce, I began considering various fundamental
20 issues regarding the upcoming 2020 census,
21 including funding and content. Part of these
22 considerations included whether to reinstate a

1 citizenship question, which other senior
2 administration officials had previously raised."

3 A Yes.

4 Q Do you see that?

5 A I do.

6 Q Do you recall when -- strike that.

7 Do you know what time period the
8 Secretary is referring to in this memo when he
9 says, "Soon after my appointment, I began
10 considering various fundamental issues"?

11 A Well, it appears that he would be talking
12 about spring of 2017.

13 Q And the Secretary says in this memo, "My
14 staff and I thought reinstating a citizenship
15 question could be warranted."

16 Do you see that line?

17 A Yep.

18 Q Okay. Who is the Secretary referring to
19 when he says my staff and I?

20 A That probably includes me and could
21 include other staff.

22 Q Which other staff?

1 A Other staff involved in this process
2 would include James Uthmeier, Mike Walsh,
3 Wendy Teramoto, the Census staff. You know,
4 again, the entire department that works for him,
5 so --

6 Q Okay. He refers in that line to, "My
7 staff and I thought reinstating a citizenship
8 question could be warranted."

9 Is that right?

10 A Right. So he's likely talking about me.
11 And, again, whether he discussed this with
12 Eric Branstad, I have no idea. Izzy Hernandez was
13 working on this for a while, so he might have
14 talked to him about it. And then, obviously,
15 James Uthmeier was working on this. Ellen Herbst,
16 whether he discussed it with her, I don't know.

17 Q Let me ask you another question about
18 your review of this memo. You mentioned that
19 before today, the last time you saw it was
20 yesterday; is that right?

21 A Right. Counsel showed it to me.

22 Q And who was present at that meeting?

1 A At the meeting yesterday?

2 Q Yes.

3 A Counsel sitting right here.

4 Q Can you identify them for the record,
5 please?

6 A Josh, Kate, Mike Walsh, David.

7 Q Those four counsel?

8 A Yeah.

9 Q Okay. And when you saw this memo before
10 June 21st, why were you shown this memo?

11 MR. GARDNER: Objection. Calls for
12 speculation.

13 BY MR. COLANGELO:

14 Q You can answer.

15 A Well, I would be shown this memo because
16 it involves an issue I worked on, so -- as one of
17 the senior counsels for the Secretary, they would
18 typically run something like this by me.

19 Q And did you meet to discuss it or were
20 you shown the memo by email?

21 A Email. And I'm sure I discussed it with
22 them, as well.

1 Q And who did you discuss it with when you
2 were shown this -- the draft of this memo before
3 June 21st?

4 A I would have discussed it with counsel.

5 Q The same counsel you just identified?

6 A No. Because I wasn't working with the
7 Justice Department folks at the time. So this
8 would have been internal at Commerce.

9 Q Okay. I thought you said it came over
10 from the Justice Department.

11 A It did, the first draft.

12 Q Okay. What do you mean by I wasn't
13 working with Justice Department folks at the time?

14 A I was not involved with direct
15 interaction with the Justice Department --

16 Q Okay.

17 A -- I was seeing them through the Office
18 of General Counsel.

19 Q So you discussed with your colleagues in
20 OGC?

21 A Correct.

22 Q The same colleagues who are here today?

1 A Michael Walsh, I know I did. I don't
2 recall if I discussed with David or not.

3 Q Anyone else?

4 A I likely talked to James Uthmeier.

5 Q Anyone else outside --

6 A Peter Davidson.

7 Q I'm sorry. Please answer.

8 A No. Peter Davidson. But those would
9 have been the likely candidates. Again, I don't
10 recall the exact discussions.

11 Q This was two months ago, correct?

12 A Correct.

13 Q Did you discuss the draft of this memo
14 with anybody outside the Office of the General
15 Counsel at Commerce?

16 A Other than when the Secretary signed it,
17 no.

18 Q Okay. Tell me who you discussed it with
19 when the Secretary signed it?

20 A The Secretary.

21 Q And what did you discuss with him when he
22 signed it?

1 A Mr. Secretary, the Justice Department
2 recommends that we file this supplemental memo,
3 and so we recommend you sign it.

4 Q And did he read it when you showed it to
5 him?

6 A I believe he did, yes.

7 Q Had you shown it to him before that
8 conversation?

9 A I -- I don't know.

10 Q Do you know if OGC had shown it to him
11 before that conversation?

12 A It's entirely possible, yes.

13 Q Do you know if the Justice Department
14 showed it to him before that conversation?

15 A I don't believe the Justice Department
16 came over to meet with them.

17 Q Did you talk with anyone other than the
18 Secretary or your colleagues from the Office of
19 General Counsel about this memo before June 21st?

20 A Not that I recall.

21 Q Did you discuss with it
22 Karen Dunn Kelley?

1 A That's entirely possible, yeah.

2 Q Okay. Anyone else?

3 A Again, don't recall specific meetings on
4 this. I think it was done largely in back and
5 forth as people were available.

6 Q Did you discuss it with Wendy Teramoto?

7 A No. I don't believe I discussed it with
8 Wendy.

9 Q Wendy is the chief of staff?

10 A Yes.

11 Q And you report to her?

12 A Yes.

13 Q Do you know why you wouldn't have
14 discussed it with Wendy?

15 A Wendy doesn't get very involved in the
16 policy matters, typically.

17 Q Why not?

18 A Because she's chief of staff. That's her
19 call.

20 Q Got it.

21 You mentioned that you were likely one of
22 the people the Secretary's referring to when he

1 says my staff and I thought reinstating a
2 citizenship question could be warranted.

3 A Uh-huh.

4 Q Why did you think in the spring of 2017
5 that reinstating a citizenship question could be
6 warranted?

7 A Because a citizenship question had
8 previously been asked. It's asked by every other
9 major democracy in the world, so why wouldn't we
10 ask?

11 Q And why did you want a citizenship
12 question?

13 A Again, I think it provides important
14 information that's used for all kind of programs.
15 And if you want a complete and accurate census,
16 you would provide it.

17 Q What caused you to form a view on whether
18 the citizenship question should or should not be
19 added?

20 A When I was -- and I didn't really know
21 that it wasn't included in the census, but once I
22 became informed of that, it struck me as odd that

1 we don't ask the question.

2 Q And you testified earlier that the
3 Secretary is the first person who raised it to
4 you?

5 A In my employment at the Department of
6 Commerce, yes.

7 Q Do you recall discussing it before you
8 worked at the Commerce Department?

9 A Probably sometime in the last 30-odd
10 years, I'm in -- you know, in political science
11 and politics, so I'm sure I discussed at.

12 Q But the first time in 2017 that you
13 recall considering this issue is when the
14 Secretary raised it with you?

15 A Correct.

16 Q And this memo says the Secretary began
17 considering it soon after his appointment?

18 A Correct.

19 Q And his appointment was February 28th
20 we've established --

21 A That's correct.

22 Q -- of 2017?

1 A Again, assuming that's the correct date,
2 yes.

3 Q I'm sure your counsel will advise us at
4 the break if that's not the correct date.

5 A I could look it up if you need me to.

6 Q Okay. So you came to the view at some
7 point in the spring of 2017 that a citizenship
8 question ought to be included. What materials did
9 you review in coming to that view?

10 A The fact that it's not on the census.

11 Q That's it?

12 A That's sufficient, from my point of view,
13 yes.

14 Q You weren't concerned about any of
15 the -- strike that.

16 Are you aware that in developing surveys
17 and statistical instruments, the Census Bureau and
18 other statistical agencies consider the impact of
19 asking a question on a range of factors, including
20 response rates?

21 A Absolutely. Yes.

22 Q And were you concerned about the

1 Census Bureau's processes for changing statistical
2 instruments when you formed a view that the
3 citizenship question should be added?

4 MR. GARDNER: Objection. Form.

5 BY MR. COLANGELO:

6 Q You can answer.

7 A Okay. Well, again, I think you need to
8 separate this out. My decision or my belief that
9 a -- a citizenship question should be included
10 does not in any way change the process by which it
11 might get included. So they're two separate
12 things. I can hold the belief that a certain
13 action might be warranted or should be taken
14 independent of any analysis of whether or not that
15 should be done. That's two separate things. So I
16 think you're conflating the two.

17 The fact that I may think that as an
18 objective, hypothetical question should one be
19 added, I can form that belief quite quickly and
20 hold that. That's, then, separate from is that
21 the right decision to make for a variety of
22 reasons, including some of the issues that you

1 just outlined.

2 Q And so in forming your view that a
3 citizenship question should be added --

4 A Again, you're characterizing it in a way
5 that I'm not. In forming my view that a
6 citizenship question would be appropriate to
7 include in a census, that's one thing.

8 Q Okay.

9 A Should be added is a separate --

10 Q Hang on a second. I haven't added a
11 question yet.

12 The Secretary's memo says my staff and I
13 thought reinstating a citizenship question could
14 be warranted, right? And you've testified that
15 you were among the people he was referring to when
16 he says my staff and I.

17 A Right.

18 Q So you were of the view that the
19 citizenship -- adding a citizenship question could
20 be warranted?

21 A Yes.

22 Q And I'm asking in forming the view that

1 adding a citizenship question could be warranted,
2 you relied only on common sense; is that what you
3 testified?

4 MR. GARDNER: Objection.

5 Mischaracterizes the witness's prior testimony.

6 BY MR. COLANGELO:

7 Q What did you rely on in forming that
8 view?

9 A So, again, the key word is could. Could
10 be warranted, meaning it is worthy of
11 investigating further. That is what the document
12 says.

13 Q What did you rely on in forming that
14 view?

15 A The fact that other countries ask this
16 information; the fact that we ask it on the ACS of
17 a percentage of the population every year; the
18 fact that as a citizen, most people wouldn't be
19 concerned with answering that question. All of
20 those things are relevant.

21 Q Did you research the statistical
22 practices of other countries in the spring of

1 2017?

2 A No.

3 Q When did you -- did there come a time
4 when you researched the statistical practices of
5 other countries?

6 A Why would that be relevant?

7 Q Mr. Comstock, you just testified that in
8 forming the view that adding a citizenship
9 question could be warranted, among the things you
10 considered was that other countries do. So I'm
11 asking you --

12 A Okay.

13 Q -- did you research the practices of
14 other countries?

15 A By that, you mean did I -- did I
16 determine that other countries ask the question?
17 Yes.

18 Q In the spring of 2017?

19 A Yeah. I think we did a quick Google
20 search, you know.

21 Q So you Googled the census practices of
22 other countries in order to determine that adding

1 a citizenship question could be warranted?

2 A Again, my formulation of a -- of a
3 decision that it could be warranted is largely
4 based on common sense.

5 Q Okay. I just want to make sure that I
6 understand. That as to the part of your answer
7 that related to the practices of other countries,
8 in the spring of 2017, you formed that view by
9 Googling it?

10 A I may have asked if other countries did
11 it or I may have gotten online and looked. I
12 don't recall.

13 Q Who would you have asked if you asked?

14 A I likely would have asked somebody from
15 Census or I might have asked David Langdon.

16 Q And if you asked, would that be reflected
17 in your -- in your email or your memo somewhere?

18 A If it was, you could have found the
19 email. So I, obviously, did not send an email if
20 I asked that question.

21 Q Okay. The --

22 MR. GARDNER: Matt, I'm sorry. I didn't

1 mean to break your line of questioning. Actually,
2 we've been going about an hour and a half. Would
3 now be an appropriate time for a break?

4 MR. COLANGELO: Yes.

5 MR. GARDNER: Let's take a break.

6 VIDEOGRAPHER: This concludes Media Unit
7 Number 1. The time on the video is 10:32 a.m. We
8 are now off the record.

9 (Off the record.)

10 VIDEOGRAPHER: This begins Media Unit
11 Number 2. The time on the video is 10:45 a.m. We
12 are on the record.

13 BY MR. COLANGELO:

14 Q Mr. Comstock, we were talking about the
15 Secretary's June 21, 2018 memo which we marked as
16 Exhibit 5. Do you still have that in front of
17 you?

18 A I do.

19 Q Okay. That memo says that other senior
20 administration officials had previously raised
21 this question. Do you see that line?

22 A Yes.

1 Q Who are those other senior administration
2 officials?

3 A You'd have to ask the Secretary.

4 Q You don't know yourself?

5 A I don't.

6 Q You have no idea which other senior
7 administration officials raised this question,
8 other than the Secretary?

9 A No.

10 Q You never asked him where the idea came
11 from?

12 A Nope.

13 Q He never told you where the idea came
14 from?

15 A Nope.

16 Q You spent a lot of time on this issue?

17 A Not relative to a lot of other things I
18 work on, no.

19 Q How would you characterize the amount of
20 time you spent on this issue?

21 A One one-hundredth of my time.

22 Q You agree that it's an important issue?

1 A Correct.

2 Q It was important to the Secretary?

3 A Correct.

4 Q He was motivated to get this done?

5 A He was working on a lot of different
6 issues at the time.

7 Q But this one was important to him?

8 A Yes. Absolutely.

9 Q Okay. And when you saw the draft of this
10 memo before June 21st and it refers to other
11 senior administration officials, you didn't
12 yourself have any view or understanding of who
13 those other administration officials were?

14 A I did not, no.

15 Q You didn't ask the secretary who those
16 other administration officials were?

17 A No.

18 Q Okay. When recommending that he sign the
19 memo, he didn't say to you who are the other
20 senior -- who the other senior administration
21 officials were?

22 A We did not discuss that, no.

1 Q And you said this came over from the
2 Justice Department?

3 A Correct.

4 Q Who sent it over, do you remember?

5 A I don't know.

6 Q Let's mark Exhibit 6.

7 (Plaintiffs' Exhibit 6, Email, was
8 marked.)

9 MR. COLANGELO: The witness has been
10 handed document stamped 2561. This has been
11 marked Exhibit 6.

12 BY MR. COLANGELO:

13 Q Do you have Exhibit 6 in front of you?

14 A I do.

15 Q Have you seen this email before?

16 A I'm not on the email, so, no.

17 Q So this is the first time you've seen
18 this message?

19 A Yeah. I -- I don't recall seeing this
20 when it was sent.

21 Q Is today the first time you've seen this
22 email?

1 A I think so, yes.

2 Q And you see this is an email from
3 Brooke Alexander to Hillary Geary?

4 A Yes.

5 Q Who is Brooke Alexander?

6 A She is the Secretary's confidential
7 assistant -- or at the time, she was. She's no
8 longer.

9 Q And do you understand the recipient of
10 this email to be the Secretary's wife?

11 A That appears to be who it's directed to,
12 yes.

13 Q And this email is dated March 5th of
14 2017, correct -- I'm sorry. Strike that.

15 This email is dated April 5th of 2017; is
16 that correct?

17 A That's what's on there, yes.

18 Q And you see that Ms. Alexander is
19 emailing Ms. Ross and says, quote, do you have
20 plans following Newseum? I'm asking because
21 Steven Bannon has asked that the Secretary talk to
22 someone about the census, and around 7:00 to

1 7:30 p.m. is the available time.

2 Do you see that?

3 A Yeah.

4 Q Okay. You know who Steven Bannon is?

5 A I do.

6 Q Who is Steve Bannon?

7 A He was an advisor to the President.

8 Q And he had that position at the time of
9 this email, correct?

10 A I do not know.

11 Q And who did Mr. Bannon want the Secretary
12 to talk to?

13 MR. GARDNER: Objection. Calls for
14 speculation. Lack of foundation.

15 THE WITNESS: I have no idea.

16 BY MR. COLANGELO:

17 Q Do you understand that the
18 second -- that -- strike that.

19 Do you understand that Mr. Bannon wanted
20 the Secretary to talk to Kris Kobach?

21 A I wasn't part of this email or this
22 conversation, so I don't know who he wanted him to

1 talk to.

2 Q Did the Secretary speak with Mr. Bannon
3 that night?

4 A I don't know.

5 MR. GARDNER: Objection. Calls for
6 speculation. Lack of foundation.

7 THE WITNESS: I do not know.

8 BY MR. COLANGELO:

9 Q Did the Secretary speak with Kris Kobach
10 on April 7, 2017?

11 A No idea.

12 Q Did you join a call with the Secretary
13 regarding the census on April 5th of 2017?

14 A I have no idea.

15 Q You don't know if you joined the call
16 with the Secretary on April 5th of 2017?

17 A I don't know what I was doing on
18 April 5, 2017 without looking at a calendar or
19 something else that would remind me. I'd have to
20 go through my emails that day. I could not tell
21 you what I was doing on that day.

22 Q Do you know who Kris Kobach is?

1 A I believe he's somebody with State of
2 Kansas maybe.

3 Q And have you spoken to Mr. Kobach before?

4 A I've never spoken to Mr. Kobach.

5 Q Have you emailed with Mr. Kobach?

6 A I've never emailed with Mr. Kobach.

7 Q And after the call that's referred to in
8 this email, did the Secretary tell you what he
9 discussed?

10 A No.

11 MR. GARDNER: Objection. Lack of
12 foundation.

13 THE WITNESS: No.

14 BY MR. COLANGELO:

15 Q Who would know what was discussed on this
16 phone call?

17 MR. GARDNER: Objection. Calls for
18 speculation. Also, lack of foundation.

19 BY MR. COLANGELO:

20 Q You can answer.

21 A The parties to the call.

22 Q You were working on the census in the

1 spring of 2017, correct?

2 A Yes.

3 Q And the Secretary frequently asked you
4 for updates on the census-related matters in the
5 spring of 2017, right?

6 A I wouldn't characterize it as frequently.

7 Q Did the Secretary ever ask you for
8 updates on census matters in the spring of 2017?

9 A Yes, he did.

10 Q Did he ever update you on developments
11 that he was aware of regarding the census in the
12 spring of 2017?

13 A It's unusual for the Secretary to update
14 me on anything.

15 Q Would the Secretary have told you if he
16 had a conversation with Steven Bannon about the
17 census?

18 A Not necessarily.

19 Q Would he have told you if he had a
20 conversation about the census with Kris Kobach?

21 A Not necessarily.

22 Q Why not?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I wouldn't speculate, but
3 he's the Secretary. He makes his own decisions.

4 BY MR. COLANGELO:

5 Q So has the Secretary ever told you about
6 a conversation he had with someone else?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: Yes. He reports to me
9 sometimes if he feels that it's essential that I
10 know the substance of conversation.

11 BY MR. COLANGELO:

12 Q Okay.

13 MR. COLANGELO: Can we mark this
14 Exhibit 7?

15 (Plaintiffs' Exhibit 7, Email, was
16 marked.)

17 THE WITNESS: Thank you very much.

18 BY MR. COLANGELO:

19 Q Handed the witness a document stamped 763
20 and marked Exhibit 7.

21 Mr. Comstock, do you have Exhibit 7 in
22 front of you?

1 A I do.

2 Q Have you seen this email before?

3 A No, I haven't.

4 Q This is the first you've ever seen this
5 email?

6 A Yes.

7 Q Okay. If you turn to the second page --

8 A I'm sorry. I'm just reading the
9 document.

10 Okay.

11 Q Do you see at the bottom of page -- of
12 the first page of this exhibit, Mr. Comstock,
13 there's an email from Kris Kobach to
14 Wendy Teramoto --

15 A Right.

16 Q -- on July 21, 2017; is that right?

17 A That's what it says.

18 Q And the email says, "Wendy, nice meeting
19 you on the phone this afternoon. Below is the
20 email that I sent to Secretary Ross. He and I had
21 spoken briefly on the phone about this issue at
22 the direction of Steven Bannon a few months

1 earlier."

2 Do you see that?

3 A I see that.

4 Q Okay. That was the call on April 5th
5 that we were just talking about, right?

6 MR. GARDNER: Objection. Lack of
7 foundation. Calls for speculation.

8 THE WITNESS: Doesn't specify when the
9 phone call took place.

10 BY MR. COLANGELO:

11 Q And did Wendy tell you she got this email
12 from Kris Kobach in July of 2017?

13 A No.

14 Q You've never spoken to Wendy about
15 Kris Kobach, at all?

16 A Not that I recall.

17 Q Is there anyone else that you're aware of
18 that Steven Bannon directed the Secretary to talk
19 to about the census, other than Kris Kobach?

20 MR. GARDNER: Objection. Lack of
21 foundation.

22 THE WITNESS: I have no knowledge of any

1 conversations with Steven Bannon, so I wouldn't
2 know who he might have suggested the Secretary
3 talk to.

4 BY MR. COLANGELO:

5 Q Have you ever spoken to Steven Bannon
6 yourself?

7 A I have never spoken to Steven Bannon
8 myself.

9 MR. COLANGELO: Can we have this marked
10 Exhibit 8?

11 (Plaintiffs' Exhibit 8, Email, was
12 marked.)

13 BY MR. COLANGELO:

14 Q This is document stamped 3709.

15 A Uh-huh.

16 Q Do you have Exhibit 8 in front of you?

17 A Uh-huh.

18 Q Who's Mark Neuman?

19 A Mark Neuman is a former -- I think he was
20 formally chair of a census advisory committee, and
21 he was a member of the transition -- I don't know
22 which aspect of transition but, basically,

1 advising on census.

2 Q How long have you known Mark Neuman?

3 A I think I met Mark Neuman probably in
4 December or January of either December 2016 or
5 January 2017. I don't recall which.

6 Q And did you meet him in your capacity as
7 the confirmation Sherpa?

8 A Yes.

9 Q Did you discuss any Commerce Department
10 policy matters with him during the transition?

11 A Not that I recall.

12 Q Did you discuss any Census Bureau policy
13 matters with him during the transition?

14 A We discussed -- I mean, he basically
15 briefed the Secretary on the Census operation,
16 some of the challenges they face, the whole issue
17 of hard-to-count populations, the challenges you
18 face hiring temporary workers, concerns about the
19 budget, whether they're properly funded. Those
20 were the primary discussion points.

21 Q Where does Mr. Newman work right now?

22 A He is a senior VP at -- I don't know the

1 name of the organization, but I know they own
2 Victoria's Secret.

3 Q He's not a government employee right now?

4 A No.

5 Q Okay. How often do you speak with him?

6 A I last saw him several months ago when we
7 ran into each other at a party.

8 Q And over the course of your time at the
9 Commerce Department, how often have you spoken
10 with him?

11 A Maybe a dozen times.

12 Q By telephone?

13 A Yep.

14 Q Have you ever met with him in person?

15 A I have met with him in person.

16 Q How many times?

17 A I think he briefed the Secretary maybe
18 two times, three times that I can recall, and he
19 had me over for dinner one time at his house to
20 meet a potential chief of staff of the
21 Census Bureau.

22 Q What did he brief the Secretary on?

1 A Again, the whole operation of the Census,
2 background on it. It's an area I was not familiar
3 with, and he was one of the folks on the
4 transition who was familiar with the Census.

5 Q Have you been present for briefings he
6 gave the Secretary on the citizenship question?

7 A I've been present -- did we cover
8 citizenship? He covered citizenship at one of the
9 briefings.

10 Q When was that?

11 A I couldn't tell you the date.

12 Q What did he say about citizenship in the
13 briefing that you attended with him?

14 A We talked about how citizenship could
15 be -- what would it be useful for and in terms of
16 a government agency. So the Voting Rights Act
17 enforcement, that's what the ACS data has provided
18 to the Justice Department.

19 Q When was that briefing?

20 A Again, sometime -- sometime in the
21 spring. I can't -- couldn't tell you exactly
22 when.

1 Q Is Mr. Neuman a lawyer?

2 A Good question. I don't know.

3 Q Does Mr. Neuman have a voting rights
4 background?

5 A I couldn't tell you.

6 Q Take a look at Exhibit 8, which is an
7 email from you to Mr. Neuman at the bottom of the
8 page dated April 13, 2017. Do you see that?

9 A Uh-huh.

10 Q And the email says, "Hi, Mark. Quick
11 question. When does Census need to notify
12 Congress regarding the questions that will be on,
13 A, the ACS and, B, the decennial census?"

14 A Correct.

15 Q Why were you asking Mark this question?

16 A Likely because Mark would know the
17 answer.

18 Q Why didn't you ask the Office of General
19 Counsel?

20 A Because at the time, there was nobody in
21 the Office of General Counsel that I
22 would -- would have been familiar with.

1 Q I'm not sure I understand what you mean
2 by nobody in the Office of General Counsel that
3 you would have been familiar with.

4 A Well, there was nobody in the Office of
5 General Counsel that I was -- had easy access to
6 that works on census issues.

7 Q You're the director of the office policy
8 in the Office of the Secretary?

9 A Correct.

10 Q Okay. But you didn't think you could ask
11 the General Counsel's office this question at the
12 time?

13 A Well, if you note the date, the time of
14 this email, it's 9:58 p.m.

15 Q Uh-huh.

16 A I'm trying to get an answer. And I'm
17 pretty certain there's going to be nobody in the
18 Office of General Counsel at 9:58 p.m.

19 Q Did you need an answer that night?

20 A I usually try to get answers as quickly
21 as I can, yes.

22 Q Why were you asking this question?

1 A Probably because it was on my list of
2 things to do, and I was working, trying to get
3 those things done.

4 Q And how did it come to be on your list of
5 things to do?

6 A Well, I may have been -- again, the
7 Secretary might have asked me about when do we
8 need to get questions, when do we need to notify
9 the Congress?

10 Q Okay. So you asked Mr. Neuman this
11 question in order to respond to a question from
12 the Secretary?

13 A I don't know the genesis because I didn't
14 say in the email why I need the information.

15 Q Why didn't you ask the Census Bureau this
16 question?

17 A Because in April, I probably had no
18 contracts over at the Census Bureau.

19 Q By April 13th of 2017, had you already
20 discussed the citizenship question with
21 Mr. Neuman?

22 A I have no idea.

1 Q Take a look at Mr. Neuman's reply to your
2 email. This is at the top of Exhibit 8. He says,
3 "I believe that the annual notification to the
4 Congressional committee relating to the
5 questionnaire content additions for 2020 census
6 just take place."

7 And then do you see in the second
8 paragraph he says, "There will be another
9 opportunity next year"?

10 A Right.

11 Q What does Mr. Neuman mean by opportunity?

12 MR. GARDNER: Objection. Calls for
13 speculation.

14 THE WITNESS: Again, if you notice the
15 rest of his statement that you didn't read, plenty
16 of questions relating to sexual orientation. So
17 we were focused on the issue of what was going to
18 be included in the questions. More precisely,
19 what was not going to be added.

20 The prior administration had wanted to
21 add, I might note, to the decennial census a
22 question on sexual orientation and gender

1 identity. So for all the people that are raising
2 an uproar right now about the addition of this
3 question, apparently there was no concern about
4 adding such a question on another sensitive topic
5 last year.

6 So leaving that aside, I think he is
7 simply pointing out to the extent there's -- we
8 have some questions we'd like to see added, there
9 will be an opportunity next year.

10 BY MR. COLANGELO:

11 Q So had you talked to Mr. Neuman about a
12 question you'd like to see added?

13 A I don't recall.

14 Q Okay. But the sexual orientation and
15 gender identity question was not included as a
16 topic, right?

17 A Correct.

18 Q And that was because you came to the
19 policy position you did not want to ask that
20 question, correct?

21 A That was the administration's conclusion,
22 yes.

1 Q So Mr. Neuman can't have been talking
2 about the opportunity to put that question back on
3 that you had just decided not to have included,
4 right?

5 A That would be speculation. I don't know
6 what he's referring to.

7 Q Okay. But you did testify he was
8 referring to the opportunity to put a question on?

9 A He was noting that there would be another
10 opportunity to place a question, should somebody
11 decide to do that next year.

12 Q And then the next paragraph of his email
13 says, "I recommend that you ask the Bureau to
14 provide a list of their response rates on all
15 demographic questions currently asked on the ACS.
16 You will see whether certain demographic questions
17 have lower response rates than others, especially
18 among certain demographic groups. That is
19 something that can be provided off the shelf."

20 A Yes.

21 Q Why is he recommending that you ask that
22 information from the Bureau?

1 MR. GARDNER: Objection. Calls for
2 speculation.

3 THE WITNESS: Again, to the extent we
4 were discussing the possibility of adding the
5 citizenship question, that would be a logical
6 question to ask.

7 BY MR. COLANGELO:

8 Q When did you first discuss the
9 possibility of adding a citizenship question with
10 Mr. Newman?

11 A Again, for the umpteenth time, I don't
12 recall the exact date.

13 Q But you agree that based on this email
14 exchange, that you had already had that
15 conversation before April 14th of 2017?

16 A Again, I have -- I don't recall when we
17 first discussed it. It's entirely possible.

18 Q Not just possible, but likely, right?
19 Why else would Mr. Newman be talking about the
20 opportunity to add a question?

21 MR. GARDNER: Objection. Calls for
22 speculation.

1 THE WITNESS: Again, if we were
2 considering changing the questions, it would be
3 important to know.

4 BY MR. COLANGELO:

5 Q And if you're considering adding a
6 citizenship question, it would also be important
7 to know the response rates on all demographic
8 questions; is that right?

9 A That would be one of the questions you
10 would ask, yes.

11 Q Okay. Did the Secretary discuss the
12 citizenship question with Mr. Newman in the spring
13 of 2017?

14 A You'd have to ask the Secretary.

15 MR. GARDNER: Objection. Lack of
16 foundation.

17 BY MR. COLANGELO:

18 Q I'm sorry. You were both speaking at the
19 same time.

20 MR. GARDNER: Objection. Lack of
21 foundation.

22 BY MR. COLANGELO:

1 Q And now please answer.

2 A I would say you'd have to ask the
3 Secretary.

4 Q Did he ever tell you that he spoke with
5 Mr. Newman about the citizenship question?

6 A I'm fairly certain he was -- he did talk
7 to him at some point.

8 Q Okay. When was that?

9 A I couldn't tell you.

10 Q Did Mr. Newman ever say to you that he
11 had spoken to the Secretary about adding a
12 citizenship question?

13 A It's possible, yeah.

14 Q Okay. When did he tell you?

15 A Again, I don't recall the exact date.

16 Q Try to place it, roughly.

17 A To your question, was there discussion of
18 the possibility of adding a citizenship question
19 in the spring? Yes. That does not mean any firm
20 decision had been made. We were exploring the
21 opportunity.

22 Q I'm not asking you about decisions. I'm

1 just asking when the Secretary spoke to
2 Mr. Newman.

3 A Again, I keep telling you I don't know
4 the exact dates he spoke to him.

5 Q Okay.

6 A I know he did speak to Mr. Newman. I
7 don't know the exact dates.

8 Q And I'm not sure I got an answer, but
9 forgive me if I did.

10 When did Mr. Newman tell you that he had
11 spoken to the Secretary about this citizenship
12 question?

13 A Again, I do not recall the exact dates of
14 conversations.

15 Q Okay.

16 A If you don't have an email that specifies
17 it, I can't tell you the date.

18 Q All right. Did you ask the Census Bureau
19 to give you the information that Mr. Newman
20 suggested in this email?

21 A Possibly. I don't recall.

22 In the decision memo we have such

1 information, so, clearly, at some point, it was
2 asked. I cannot tell you.

3 Q Can you tell me what you mean by decision
4 memo?

5 A The memo that the Secretary produced
6 documenting his decision. There was a reference
7 to other response rates and demographic. So,
8 clearly, at some point, the information became
9 available.

10 Q And you're referring to the
11 March 26, 2018 from the Secretary to Karen
12 Dunn Kelley?

13 A Yes.

14 Q But you don't recall seeing that
15 information -- strike that.

16 MR. COLANGELO: Let's mark Exhibit 9.

17 (Plaintiffs' Exhibit 9, Email, was
18 marked.)

19 BY MR. COLANGELO:

20 Q We have marked a document stamped 3694 as
21 Exhibit 9. Do you have this email in front of
22 you?

1 A I do.

2 Q Have you seen this email before?

3 A Yes.

4 Q Before today, when is the last time you
5 saw this email?

6 A Yesterday.

7 Q And this is an email from
8 Brooke Alexander to you with a copy to
9 Wendy Teramoto; is that right?

10 A Correct.

11 Q Dated April 20, 2017?

12 A Yep.

13 Q And did you understand this to be a
14 message from the Secretary?

15 A That's what Brooke's message says.

16 Q Brooke has access to the Secretary's
17 email?

18 A Yes.

19 Q And is it -- okay. Withdrawn.

20 Are you familiar with the National
21 Advisory Committee on Racial, Ethnic and Other
22 Populations?

1 A No.

2 Q You have no idea what the National
3 Advisory Committee is?

4 A I mean, I know it's an advisory committee
5 to Census, but outside of that, I -- I couldn't
6 tell you what they do, other than what their title
7 suggests that they do.

8 Q So you're aware that there's a National
9 Advisory Committee on Racial, Ethnic and Other
10 Populations that advises the Census Bureau?

11 A I take that from this email that's
12 correct, yes.

13 Q And what do you understand the role of
14 the advisory committee to be?

15 A To provide advice to the Census Bureau.

16 Q Okay. The message from Brooke speaking
17 for the Secretary to you says, "Earl, Census
18 director has on April 29th a meeting of the
19 National Advisory Committee. We must get our
20 issue resolved before this" -- exclamation point,
21 and the must is underlined.

22 Do you see that?

1 A I see that.

2 Q What is our issue?

3 A I couldn't tell you.

4 Q Our issue is the citizenship question,
5 right?

6 MR. GARDNER: Objection. Calls for
7 speculation. Lack of foundation.

8 THE WITNESS: I would say likely not,
9 actually, given there's no reason to believe the
10 National Advisory Committee on Racial, Ethnic and
11 Other Populations would be advising on a
12 citizenship question.

13 BY MR. COLANGELO:

14 Q Were there other issues that you'd been
15 talking about with the Secretary involving the
16 census in the spring of 2017 that would relate to
17 the National Advisory's mandate?

18 A Certainly the SOGI question would, and
19 the MENA question would.

20 Q But the notification date for the SOGI
21 question was at the end of March in 2017 -- for
22 the SOGI topics, I should say, correct?

1 A Correct.

2 Q So that was already resolved by April,
3 right?

4 A I'm not certain of the timing, but MENA,
5 I think, was not resolved until sometime in the
6 spring or summer.

7 Q And sticking with the SOGI question --
8 and for the record, that' S-O-G-I. SOGI stands
9 for sex orientation and gender identity.

10 A Correct.

11 Q Would you conclude if the Secretary
12 referred to a National Advisory Committee on
13 Racial and Ethnic, Populations that the SOGI
14 question would be what he had in mind?

15 A I would guess. Again, this is
16 speculation, but my best guess, based on this
17 reference, is probably more like the MENA issue is
18 what was in front of us.

19 Q Okay. And describe the MENA issue?

20 A The Middle Eastern North African
21 question. There's a question as to whether you
22 ask two questions or you ask one question. And

1 it's not a topic I spent a tremendous amount of
2 time on, but it was something that the Census was
3 very much discussing at the time.

4 Q And had you discussed that issue with the
5 Secretary?

6 A We had a conversation or two about it.
7 And, again, it was largely in the context of which
8 way to go on that question.

9 Q And why would the Secretary have said
10 that that issue must be resolved by April 29th?

11 MR. GARDNER: Objection. Calls for
12 speculation. Lack of foundation.

13 BY MR. COLANGELO:

14 Q You can answer.

15 A You know, again, at that point -- this is
16 shortly before a -- if I recall correctly, a
17 Congressional hearing that was going to go into
18 the census and probably wanted to have a position
19 to recommend to Director Thompson as to what he
20 should say to the advisory group. Again, I don't
21 recall this reference or precisely what he was
22 speaking to.

1 Q Okay. This isn't a topic you'd spent a
2 lot of time on, right, the Middle Eastern
3 North African question?

4 A Correct.

5 Q There's no reason the Secretary would
6 have referred to it as our issue, is there?

7 MR. GARDNER: Objection. Calls for
8 speculation. Lack of foundation.

9 THE WITNESS: Again, depending on if his
10 perception was that there was an administration
11 policy call to make on it, he would refer to it as
12 our issue.

13 BY MR. COLANGELO:

14 Q He could also have referred to the
15 citizenship issue as your issue, right?

16 MR. GARDNER: Objection. Calls for
17 speculation. Lack of foundation.

18 THE WITNESS: Again, I would say looking
19 at the context of the email, I would say that's an
20 unlikely connection.

21 BY MR. COLANGELO:

22 Q And by April 20th of 2017, how many times

1 had you discussed the citizenship question with
2 Secretary Ross?

3 A I have no idea.

4 Q More than a handful?

5 A Possibly.

6 Q Okay. Would you say he was extremely
7 interested in the issue?

8 A Certainly, when he raised it, he was
9 interested in it.

10 Q Okay. You wouldn't say he was extremely
11 interested in the MENA question, right?

12 A When we discussed it, he was equally
13 interested in that.

14 Q He didn't raise it with you with the same
15 frequency he raised the citizenship question,
16 right?

17 A That's correct.

18 Q Why was Wendy Teramoto copied on this
19 email?

20 MR. GARDNER: Objection. Calls for
21 speculation.

22 THE WITNESS: Couldn't tell you.

1 BY MR. COLANGELO:

2 Q Did you speak with her about this issue
3 after you got this message?

4 A It's possible. I don't recall.

5 MR. COLANGELO: Can we mark this
6 Exhibit 10?

7 (Plaintiffs' Exhibit 10, Email, was
8 marked.)

9 BY MR. COLANGELO:

10 Q Handed the witness a document stamped
11 3710 and we've marked it as Exhibit 10.

12 A Okay.

13 Q Have you read this email?

14 A Yep.

15 Q Okay. You've seen this email before?

16 A I have.

17 Q When's the last time you saw this email?

18 A Yesterday.

19 Q When you saw this email yesterday, was it
20 redacted as it is in the form I've shown it to you
21 now or was it unredacted?

22 A It was redacted.

1 Q Okay. And you see that the Secretary has
2 written you an email on May 2, 2017 that says,
3 quote, worst of all, they emphasize they have
4 settled with Congress on the questions to be
5 asked. I am mystified why nothing has been done
6 in response to my months' old request that we
7 include the citizenship question. Why not?

8 Do you see that?

9 A I see that.

10 Q When did the Secretary make his months'
11 old request to include the citizenship question?

12 A Again, sometime in the spring.

13 Q Probably on March 10th when you emailed
14 him the Wall Street Journal blog post?

15 A Potentially. I don't recall.

16 Q Who does the "they" refer to in the line
17 I just read you from the Secretary's email?

18 MR. GARDNER: Objection. Calls for
19 speculation.

20 THE WITNESS: I don't know.

21 BY MR. COLANGELO:

22 Q You mentioned a minute ago the Census

1 director in the -- this time period, had an
2 upcoming House appropriation hearing; is that
3 right?

4 A I believe I said the Secretary had an
5 upcoming House appropriation hearing.

6 Q Do you remember the date of that hearing?

7 A I don't.

8 MR. COLANGELO: Can we mark this Exhibit
9 Number 11?

10 (Plaintiffs' Exhibit 11, Email, was
11 marked.)

12 BY MR. COLANGELO:

13 Q Okay. This is -- have you had a chance
14 to look at this email?

15 A Lot of black spots on it. Okay.

16 Q Have you seen this email before?

17 A Apparently I must have seen it when I
18 wrote it.

19 Q When's the last time before today you saw
20 this email?

21 A Probably May 1, 2017.

22 Q Okay. And does this email reflect that

1 you sent the Secretary, Director Thompson's House
2 appropriation subcommittee written testimony?

3 A Yes.

4 Q And his testimony was for, quote, this
5 Wednesday?

6 A Right. That's what it appears.

7 Q And if I told you that -- oh, if you look
8 at the subject line it says, Wednesday, May 3rd;
9 is that right?

10 A That's correct.

11 Q Okay. So let's refer back to Exhibit 10.

12 A Yep.

13 Q Now that you see the day before you had
14 sent the Secretary Mr. Thompson's written
15 testimony for the House appropriation subcommittee
16 hearing --

17 A Right.

18 Q -- what do you understand, worst of all
19 they emphasize they have settled with Congress to
20 mean?

21 MR. GARDNER: Same objection. Calls for
22 speculation.

1 THE WITNESS: Again, I'm not sure without
2 further context who they is. He could be
3 referring to that advisory committee that you had
4 had in a previous email. He could be referring to
5 Census.

6 BY MR. COLANGELO:

7 Q Does the advisory committee establish the
8 content for the census?

9 A Again, the context of this email is that
10 somebody appears to be emphasizing that they've
11 settled with Congress on the questions. That
12 clearly is not the case, because questions aren't
13 due until March of 2018. So they couldn't have
14 settled on the questions.

15 Q And you see that at the top of
16 Exhibit 10, you email the Secretary saying, "On
17 the citizenship question, we will get that in
18 place"?

19 A Uh-huh.

20 Q Do you see that?

21 A Yep.

22 Q What did you mean by that?

1 A Well, it means that we're, as instructed,
2 going to continue to work on developing a
3 citizenship question, and that process -- again,
4 it's probably helpful at this point to explain on
5 the policy side, right, you formulate -- you
6 formulate something that you think you would like
7 to do, and then you go explore that. That's my
8 job, is to go. Secretary says, I think this might
9 be a good idea, you run it down, and you track
10 down the issues, and you say -- you know, first
11 question I usually ask is, okay, is this something
12 that Department of Commerce does? Do we have
13 legal authority to do this? Once you clear those
14 two thresholds, now you get to work.

15 But I don't spend a lot of time chasing
16 down things that people are not planning on doing.

17 Q So you --

18 A So there has to be some initial threshold
19 decision that this is worth pursuing.

20 Q Now, let me stop you there, because you
21 said a minute ago, as instructed. And you're
22 referring to instructions from the Secretary,

1 correct?

2 A To pursue, exploring the question.

3 Q This was instructions to add the question
4 in response to my months' old request that we
5 include the citizenship question, correct?

6 A This would be instructions to review and
7 consider and present to him information that would
8 allow him to make a decision on whether or not to
9 take final action.

10 Q Mr. Comstock, I'm just asking you what
11 you understood on May 2nd --

12 A And that's what I'm telling you I
13 understood on May 2nd.

14 Q Hold on one second. Let me finish the
15 question.

16 A Uh-huh.

17 Q The Secretary wrote, "I am mystified why
18 nothing has been done in response to my months'
19 old request that we include the citizenship
20 question."

21 And you responded, "On the citizenship
22 question, we will get that in place"?

1 A Correct.

2 Q Okay. So my question is: By we will get
3 that in place, what did you mean?

4 A I meant that I will present to you the
5 information and the process necessary for you to
6 decide if you would like to pursue this question.

7 Q Your email says we will get that in
8 place, correct?

9 A I mean, we will get in front of you the
10 necessary information for you to make a decision.
11 Part of my role in this process is explaining to
12 people who have never worked in government before
13 that there are processes that you have to follow
14 in order to make an action happen. You're dealing
15 with people who are used to being able to make a
16 decision and it simply goes into effect.

17 Q Okay.

18 A That's not the way the U.S. government
19 works.

20 Q So the process that you then go on to
21 tell the Secretary he has to follow is later in
22 your message; is that right?

1 A That part of the process, yes.

2 Q And that email says we need to work with
3 Justice to get them to request that citizenship be
4 added back as a census question; is that right?

5 A That's right.

6 Q Why would you say you needed to work with
7 the Justice Department to get them to request that
8 citizenship be added back?

9 A Because based on a very preliminary
10 review, they appeared to be the most likely
11 government body that would have a specific need
12 for the information that would support adding a
13 citizenship question to the decennial census.

14 Q Who conducted that preliminary review?

15 A We were told by the Census Bureau that
16 the Justice Department was the person that had
17 requested the citizenship question on the ACS and
18 that they utilized the ACS data for Voting Rights
19 Act information.

20 Q Who in the Census Bureau told you that?

21 A I couldn't tell you.

22 Q And why did you need a request from

1 Justice?

2 A Again, based on the preliminary review,
3 the understanding we had was questions are added,
4 based on requests from a government agency. There
5 is such a thing as the Paperwork Reduction Act
6 where you have to justify to OMB why do I need
7 this information? That has to get cleared. So
8 there are certain hurdles you have to get through.
9 So if at the end of the day the Secretary decided
10 to pursue this question, we would need to clear
11 certain legal thresholds.

12 Q Why not just tell the Census Bureau to
13 add the citizenship question and say the Secretary
14 wanted it?

15 A Because I'm not sure that that would be
16 the process they would necessarily agree to
17 follow.

18 Q So you had to have it come from DOJ in
19 order for the Census Bureau to agree to follow it?

20 A Again, that was a preliminary conclusion
21 based on a cursory analysis.

22 Q Your email then says, "We have the court

1 cases to illustrate that DOJ has a legitimate need
2 for the question to be included."

3 What court cases were your referring?

4 A I don't recall the exact court cases.

5 Q Did you research those court cases?

6 A I did research a court case where there
7 was a scenario in which you would need -- it would
8 be important to have Citizen Voting Age Population
9 data in order to make a Voting Rights Act claim.

10 Q How did you identify that case?

11 A By a legal research.

12 Q What do you mean by legal research?

13 A Well, I think I talked to -- I'm trying
14 to think -- I think Mark Neuman may have provided
15 a case name. I talked to James Uthmeier, who
16 looked at some cases. Basically said, okay, if
17 this is the question -- I mean, it's what you do
18 as an attorney all day long, is to go find cases
19 to support what you're looking for.

20 Q So Mark Neuman identified for you a case
21 that would support DOJ's need for this
22 information?

1 A Yeah. I said I may have spoken to
2 Mark Neuman on that. I think he may have provided
3 it. I don't recall. I know James Uthmeier looked
4 at some cases.

5 Q Would he have provided that case for you
6 on a phone call or by email?

7 A James?

8 Q Pardon me?

9 I'm sorry. Withdraw that question.

10 Q Would Mr. Newman have provided that case
11 to you by email or on the phone?

12 A Well, if he provided it by email, you'd
13 have it. I don't have the emails in front of me,
14 so I can't tell you.

15 Q So by May of 2017, you'd come to the view
16 that you needed another agency to request a
17 citizenship question on the census?

18 A That was based on the preliminary
19 analysis, yes.

20 Q You then say in your email, "I will
21 arrange a meeting with DOJ staff this week to
22 discuss."

1 Do you see that?

2 A Yes.

3 Q Okay. So before May 2, 2017, you had not
4 had any discussions with the Department of Justice
5 about the citizenship question, right?

6 A Not to my knowledge.

7 Q What did you do to arrange a meeting with
8 DOJ staff to discuss?

9 A I asked Eric Branstad for a name over at
10 DOJ, and he provided me the name of
11 Mary -- Mary Jane [sic] Hankey I think it was,
12 whom I then contacted.

13 Q Okay. Your email refers to the court
14 cases to illustrate that DOJ has a legitimate need
15 for the question to be included.

16 A That's what it says, yes.

17 Q What were the other needs that you had
18 talked about for including the citizenship
19 question?

20 A I don't recall.

21 Q Okay. And by legitimate need, were you
22 concerned that other needs that didn't come from

1 DOJ would not be legitimate needs?

2 A No. I think that's just an
3 imprecise -- the use of the term legitimate,
4 something to say that it would be a need that
5 would be considered a government need for the
6 information.

7 MR. COLANGELO: Counsel, five-minute
8 break. Let's go off the record.

9 VIDEOGRAPHER: Going off the record. The
10 time on the video is 11:31 a.m.

11 (Off the record.)

12 VIDEOGRAPHER: This begins Media Unit
13 Number 3. The time on the video is 11:45 a.m. We
14 are on the record.

15 BY MR. COLANGELO:

16 Q Okay. Let's mark as Exhibit 11 --

17 MR. GARDNER: No. I think 12.

18 MR. COLANGELO: 12. Sorry. Thank you.

19 (Plaintiffs' Exhibit 12, Email, was
20 marked.)

21 BY MR. COLANGELO:

22 Q This is document stamped 3699.

1 Mr. Comstock, do you have Exhibit 12 in
2 front of you?

3 A Uh-huh.

4 Q Have you seen this email before?

5 A No. I mean, part of it I clearly did,
6 because it's to me, but -- oh, that's the previous
7 email. So I haven't seen the upper part of this
8 document.

9 Q Okay. So this is an -- an email chain
10 from Brooke Alexander forwarding to Wendy Teramoto
11 the May 2nd email that the Secretary wrote to you
12 where he says I'm mystified why nothing has been
13 done in response to my months' old request; is
14 that right?

15 A Yeah. Appears to be, yeah.

16 Q So it looks like Brooke forwarded the
17 Secretary's email to Wendy?

18 A Correct.

19 Q Is that her regular practice?

20 MR. GARDNER: Objection. Calls for
21 speculation.

22 THE WITNESS: Yeah. I couldn't tell you.

1 BY MR. ADAMS:

2 Q Do you know why she did in this case?

3 A I don't know.

4 Q It's because the Secretary was expressing
5 frustration and one concern was that one of his
6 priorities had not yet been accomplished and she
7 wanted the chief of staff to know?

8 A I don't know.

9 Q Would that be your surmise?

10 MR. GARDNER: Objection. Form.

11 THE WITNESS: It's certainly a
12 possibility.

13 BY MR. COLANGELO:

14 Q And then the -- strike that.

15 Wendy, from this chain, it appears, sends
16 an email to the Secretary and says, "I continue to
17 talk frequently with Mark Neuman, and we often
18 have dinner together. He will not leave L-E-S" or
19 "LES, but is in love with the census and talks
20 about it nonstop."

21 Do you see that?

22 A Yes.

1 Q Why would the Secretary's concern about
2 the citizenship question prompt Wendy to bring up
3 Mark Neuman?

4 MR. GARDNER: Objection. Lack of
5 foundation. Calls for speculation.

6 THE WITNESS: Again, he was the primary
7 transition team person advising us on Census.

8 BY MR. COLANGELO:

9 Q Okay. And the email also says, "Do you
10 want me to set up another meeting?"

11 Do you see that?

12 A I see that.

13 Q What's the earlier meeting that she's
14 referring to?

15 MR. GARDNER: Objection. Calls for
16 speculation.

17 THE WITNESS: I don't know.

18 BY MR. COLANGELO:

19 Q Had you attended the meetings with the
20 Secretary and Mr. Neuman on the citizenship
21 question before May 2, 2017?

22 A I don't know. I had attended meetings

1 with the Secretary and Mr. Newman on the census.

2 Q Before May 2017?

3 A Yes.

4 Q How many times?

5 A I don't know. Two times, three times.

6 I'd -- you'd have to check his count.

7 Q Okay. And the citizenship question was
8 discussed in those earlier meetings?

9 A I don't recall.

10 Q And you see the Secretary writes back and
11 says, "Let's try to stick him in there for a few
12 days to fact find."

13 A Yes.

14 Q Do you see that?

15 Were you aware of that request?

16 A I was aware that the Secretary was
17 distressed with Director Thompson who had just
18 told us that he had massively overrun the CEDCaP
19 budget and failed to warn us that that was coming.
20 So the Secretary was not happy with the Census
21 leadership at the time and was trying to find
22 someone who could be -- provide us better

1 information about what was going on at Census.

2 Q Okay. This email refers to the
3 citizenship question; is that right?

4 MR. GARDNER: Objection. Calls for
5 speculation. Lack of foundation.

6 THE WITNESS: I know the forwarded email
7 refers to the citizenship question. There's
8 nothing in Ms. Teramoto's email that refers to
9 citizenship.

10 BY MR. COLANGELO:

11 Q But she's not forwarding any other
12 information there, correct?

13 A Well, I can't see what's blacked out, so
14 I have no idea what else is discussed there. But
15 I know that there is a large amount of black out,
16 so presumably quite a number of other things were
17 discussed.

18 Q And was Mark Neuman placed in
19 Census Bureau to fact find?

20 A No.

21 Q Why not?

22 A I imagine because he had a much better

1 paying job where he's at.

2 Q Okay. And did Wendy or the Secretary
3 convey this request to you at the time?

4 A Wendy and the Secretary discussed with me
5 the possibility of putting Mark Newman in Census
6 so that we could get a handful of what's going on
7 with the budget, yes.

8 Q And did you discuss putting Mark Neuman
9 in Census so he could help facilitate the
10 inclusion of a citizenship question?

11 A That was never discussed -- or not to my
12 knowledge.

13 MR. COLANGELO: Let's mark as Exhibit 13.

14 (Pleadings' Exhibit 13, Email, was
15 marked.)

16 BY MR. COLANGELO:

17 Q Do you have the document that has been
18 marked Exhibit 13?

19 A Yes.

20 Q For the record, this is Bates stamp 3071
21 and this email from Eric Branstad to Matthew
22 Flynn, Subject Line DOJ contact, "Who is the best

1 counterpart to reach out to at DOJ regarding
2 census and legislative issues?"

3 Have you seen this before?

4 A Yes.

5 Q When was the last time you saw it before
6 today?

7 A Yesterday.

8 Q Do you know who Matthew Flynn is?

9 A I have no idea who Matthew Flynn is.

10 Q You testified before our last break that
11 you asked Eric to get you a point of contact at
12 the Justice Department, right?

13 A Correct.

14 Q So does this email exchange reflect Eric
15 followed up on that request?

16 A Yes.

17 Q And he forwards it to you on May 3; is
18 that right?

19 A It looks like he forwarded it to me --
20 (Conference call interruption.)

21 THE WITNESS: It looks like he sent it to
22 me on May 4th and I -- May 3rd and I replied

1 May 4th early in the morning.

2 BY MR. COLANGELO:

3 Q Saying, "Thanks, Eric. Earl."

4 Correct?

5 A Yes.

6 Q So on May 2nd, the Secretary asked you
7 why nothing had been done in response to his
8 months' old request. You told him you needed to
9 get the Justice Department to request the
10 question. You also told him that you would set up
11 meetings with the Justice Department to discuss.
12 And then after that, you asked Eric Branstad to
13 get you a point of contact at the Justice
14 Department and he did, right?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: That appears to be the
17 sequence.

18 BY MR. COLANGELO:

19 Q Okay. And you testified earlier that you
20 hadn't ever spoken to the Justice Department
21 before that on the citizenship issue?

22 A That's correct.

1 MR. COLANGELO: Let's mark Exhibit 14.

2 (Plaintiffs' Exhibit 14, Email, was
3 marked.)

4 BY MR. COLANGELO:

5 Q Exhibit 14 is document stamped 2462. You
6 have Exhibit 14 in front of you?

7 A I do.

8 Q And why were you contacting Mary Blanche?
9 Her surname is redacted on this email, I assume
10 for personal privacy reasons. But this is Mary
11 Blanche Hankey, correct?

12 A Yes.

13 Q Why were you contacting Mary Blanche
14 Hankey?

15 A That was the name that Eric Branstad said
16 he'd provide me.

17 Q Okay. And do you know where in the
18 White House -- strike that.

19 Do you know where in the
20 Justice Department she worked?

21 A She was advisor for -- to
22 Attorney General Sessions.

1 Q So she worked for the Attorney General?

2 A Correct.

3 Q And you reached out to her to talk about
4 the citizenship question, right?

5 A Amongst other things, yes.

6 Q And you reached out to her and asked her
7 for times for a call that day, right?

8 A That's what I'm asking for, yes.

9 Q Okay. Is that because this was an urgent
10 priority for the Secretary?

11 A I think you can divine from his prior
12 email that he was hoping I might take a quick
13 action on this, so I was trying to be responsive.

14 Q So the answer is yes?

15 A I'm not going to speculate as to whether
16 he thought it was urgent or not, but he was
17 conveying he would like me to get moving.

18 Q You were treating it as an urgent matter?

19 A Correct.

20 Q And then you -- did you speak to
21 Ms. Hankey?

22 A I did speak to Ms. Hankey.

1 Q How many times?

2 A I met with her -- I think I spoke with
3 her by phone and then met with her in her office.

4 Q When did you speak with her by phone?

5 A I couldn't tell you.

6 Q Was it on May 4th?

7 A It's possible.

8 Q And then you met with her in her office,
9 you said?

10 A Yes.

11 Q When was that meeting?

12 A I don't know the exact date.

13 Q When you spoke to her on the phone, was
14 anyone else on the call with you?

15 A No.

16 Q Was anyone else on the call on her end?

17 A Not that I was aware of, no.

18 Q When you met with her in person, did
19 anyone from the Commerce Department go with you?

20 A No.

21 Q Did anyone from the Census Bureau go with
22 you?

1 A No.

2 Q Was there anyone else in the meeting that
3 she brought?

4 A No.

5 Q What did you say to her when you spoke to
6 her on the phone?

7 A That I'd like to come over and discuss
8 what issues the Justice Department might have with
9 Commerce that I could be helpful on and talk to
10 her about an issue that we were interested in.

11 Q And that issue was the citizenship
12 question?

13 A Correct.

14 Q And what did she say about that?

15 A Let's get together and meet.

16 Q So then you went over to meet with her.
17 Did she have any issues that she wanted to raise
18 with you?

19 A I don't recall that Justice had any
20 particular Commerce issues, no.

21 Q So this was a meeting about the
22 citizenship question?

1 A I'd say that was the primary topic.

2 Q Okay. And what did you say to her when
3 you met with her in person?

4 A That we -- the Secretary had asked us to
5 look into the possibility of adding a citizenship
6 question, and that since the Justice Department
7 was the agency that had sponsored the question for
8 the ACS, it seemed that that was a logical place
9 to start, and was there someone in the
10 Justice Department with whom I should speak about
11 that.

12 Q And what did she say?

13 A Let me look into it.

14 Q How long was the meeting?

15 A Well, we met for about 20 minutes.

16 Q Did you explain why the Secretary wanted
17 the citizenship question?

18 A No.

19 Q Did you have an understanding at that
20 point as to why the Secretary wanted the
21 citizenship question?

22 A I've never asked the Secretary why he

1 wanted a citizenship question.

2 Q Did she ask you why it was important to
3 Commerce Department to add a citizenship question?
4 She being Ms. Hankey.

5 A No.

6 Q You mentioned earlier that you did some
7 legal research or that Mark Neuman or others may
8 have identified cases for you. Did you identify
9 those cases to Ms. Hankey in that conversations?

10 A I don't recall.

11 Q Did you bring any paper with you to that
12 meeting?

13 A Not that I recall.

14 Q Did you take notes?

15 A No.

16 Q After the meeting, did you update anyone
17 at the Commerce Department and your discussion?

18 A I don't recall.

19 Q Did you speak to the Secretary to tell
20 him that -- on an issue that you understand to be
21 a priority, you'd gone over to the
22 Justice Department to make some progress on his

1 request?

2 A I might have mentioned I had a meeting
3 over there.

4 Q Did you mention it to Wendy?

5 A I might have.

6 Q Did you talk about it with anyone else in
7 the Office of Policy?

8 A I might have told Eric that I met with
9 the person he recommended.

10 Q Eric Branstad?

11 A Yes.

12 Q Is the senior White House advisor
13 position in Office of Policy?

14 A No.

15 Q My question was: Did you talk to anyone
16 in the Office of Policy about the meeting?

17 A Not that I recall.

18 Q Other than the Secretary, Wendy and Eric,
19 did you talk to anyone else at the
20 Commerce Department about that meeting?

21 A Not that I recall.

22 Q Did you talk to Mark Neuman about it?

1 A Not that I recall.

2 Q And after you met with Ms. Hankey and she
3 said she'd look into it, what was the next that
4 you heard from the Justice Department on this
5 issue?

6 A I think when she contacted me, provided a
7 name.

8 Q How long after your meeting did she
9 contact you and provide a name?

10 A There's an email that documents it, you
11 could tell from that, but otherwise, I have no
12 idea.

13 Q Okay.

14 A I mean, it was sometime in the next
15 couple weeks, but --

16 Q And what name did she give you?

17 A I -- I know I put it in a memo to the
18 Secretary later on, so you'd have to look at that
19 memo.

20 Q Is it James McHenry?

21 A That sounds like the right name.

22 Q When she spoke to you to pass along

1 James McHenry's name, what did she say about why
2 she was directing you to him?

3 A She didn't say much. Just said this
4 would be the best guy to talk to.

5 Q Okay. Had you spoken to James McHenry
6 before?

7 A Never talked to him before.

8 Q Did she tell you what his position was in
9 the Department of Justice?

10 A She might have.

11 Q What was his position?

12 A I don't know, actually.

13 Q After she gave you Mr. McHenry's name,
14 what did you do next to contact him?

15 A I called him on the phone.

16 Q And when you spoke to him on the phone
17 what did you say?

18 A I outlined that we were interested in
19 seeing what kind of level of interest the
20 Justice Department would have in requesting the
21 citizenship question be asked -- added to the
22 decennial census.

1 Q And did you tell him why the
2 Commerce Department wanted the Justice Department
3 to make that request?

4 A Because that was our understanding of the
5 process. They were the people that needed it for
6 ACS, and our understanding was that it might be
7 useful for them to have it at a more granule
8 level, which would be needed -- you'd need to put
9 it on the decennial census to do that.

10 Q So you were -- you told him that the
11 Commerce Secretary wanted the question and wanted
12 to know if DOJ would ask for the Census Bureau to
13 add the question; is that right?

14 A Those are your words.

15 Q Well, I'm asking you to tell me yes or
16 no.

17 A Well, if the question is yes or no, then
18 the answer is no.

19 Q Okay. How would you put it in your
20 words?

21 A In my words, what I told him was that we
22 were exploring the possibility and wanting to know

1 the level of interest at the Justice Department in
2 making such a request, would this be information
3 they could use?

4 Q So this is the shortly -- this is shortly
5 after the Secretary of Commerce emailed you and
6 said I am mystified why nothing had been done in
7 response to my months' old request?

8 A Right.

9 Q But your testimony is that you conveyed
10 to the Justice Department that you were exploring
11 the issue?

12 A As I explained before, when -- when the
13 Secretary says he would like to do something,
14 there's a presumption that we will attempt to do
15 that. That's subject to revision as more
16 information is made available. So I'm exploring
17 what is necessary to follow through on the
18 Secretary's request. That request may be modified
19 or changed, based on the information that I
20 provide.

21 Q Okay. How many times did you speak to
22 Mr. McHenry?

1 A I think three or four times.

2 Q And what was the next time you spoke to
3 him after the initial phone call?

4 A Maybe a week later.

5 Q Okay. And what did he say when he -- did
6 he call you or did you call him?

7 A I don't recall.

8 Q And what did you discuss on that
9 conversation?

10 A That he was still exploring the question.

11 Q How long was that conversation?

12 A Five minutes.

13 Q Okay. So he didn't have anything new to
14 report?

15 A Right.

16 Q Okay. And you said you spoke to him at
17 least a couple more times; is that right?

18 A Again, I don't recall the exact number of
19 times, but somewhere in the vicinity of three or
20 four times.

21 Q So after the second call where he said he
22 was still exploring it, tell me about the next

1 conversation?

2 A Memory serves, I think the next
3 conversation was a similar one. He was still
4 looking into the matter and then -- and then the
5 last conversation he and I had, he directed me to
6 somebody at the Department of Homeland Security.

7 Q Okay. And over what period of time were
8 you talking to Mr. McHenry on the phone?

9 A Probably over the course of a month.

10 Q So this was primarily in May of 2017?

11 A I honestly don't recall, but sometime in
12 May, early June.

13 Q And who did he direct you to at the
14 Department of Homeland Security?

15 A I don't remember the person's name.

16 Q Was it Gene Hamilton?

17 A Again, I know I prepared a memo for the
18 Secretary that had the name. So if that's the
19 name that was on the memo, then, yes, that would
20 be the person I spoke with.

21 Q How many times did you speak to your
22 point of contact at the Department of

1 Homeland Security?

2 A Again, I think it was -- I think this was
3 like two or three times.

4 Q And what did you say when you first spoke
5 to Mr. Hamilton?

6 A Same -- same basic message, we're looking
7 into the -- exploring the possibility of putting a
8 census question on -- a citizenship question on
9 the decennial census, would this be information
10 that the Department of Homeland Security would
11 need or use, and could he answer that, and his
12 response was, let me look into it.

13 Q Now, the Department of Homeland Security
14 wasn't the original requester for the ACS
15 citizenship question, to your understanding,
16 correct?

17 A Correct.

18 Q Was it your view that the Department of
19 Homeland Security would also be a legitimate
20 requester of this information?

21 A Legitimate is not the right word, but
22 the -- I think my view was, let me see if

1 there's -- what their explanation would be, but
2 they were obviously not our first choice.

3 Q So you were looking for an agency to make
4 this ask?

5 A Again, my understanding of the process,
6 based on the research I've been able to do, and
7 consequently was advising the Secretary was an
8 agency needed to make the request; therefore, you
9 have to find an agency that would have a reason to
10 be using this information. And Justice,
11 obviously, was the primary recipient of the CVAP
12 data from the ACS, so they were the logical place
13 to start. Justice then says go to
14 Homeland Security, and I say, okay, maybe there's
15 something about Homeland Security that I don't
16 know about that might justify this data. So you
17 follow up on a call, get more information, informs
18 your decision, you might change it.

19 Q And so my question was: So you were
20 looking for an agency to make this ask and --

21 A Correct. In order to implement the
22 process that had been outlined to us, you needed

1 an agency. So that was my task at the time.

2 Q Thank you.

3 MR. COLANGELO: Let's mark this
4 Exhibit --

5 MR. GARDNER: 15.

6 MR. COLANGELO: -- 15.

7 (Plaintiffs' Exhibit 15, Memo, was
8 marked.)

9 THE WITNESS: The very memo I was
10 speaking of.

11 BY MR. COLANGELO:

12 Q Exhibit 15 is document stamped 9834.

13 Mr. Comstock, do you have Exhibit 15 if
14 front of you?

15 A I do.

16 Q Is this the very memo you were just
17 speaking about?

18 A It's the very memo I was just speaking
19 about.

20 Q And what's the date on this memo?

21 A September 8th.

22 Q And you see in the second paragraph of

1 this memo, the sentence that says, "James directed
2 me to Gene Hamilton at the Department of
3 Homeland Security."

4 A Correct.

5 Q So the person you were speaking to at DHS
6 was Gene Hamilton, right?

7 A Apparently so, yes.

8 Q The -- in that paragraph -- strike that.

9 This is a memo from you to the Secretary
10 dated September 8th of 2017, correct?

11 A Correct.

12 Q Why did you prepare this memo?

13 A Because the Secretary was asking about
14 the lack of progress and said he was prepared to
15 call the Attorney General, and so he needed the
16 timeline of who I had spoken to.

17 Q Okay. What do you mean by lack of
18 progress?

19 A Well, obviously, we're now September 8th,
20 and he inquired on May -- May whatever the date
21 was, 2nd, 5th, whatever it was, saying how come we
22 haven't made more progress? Three months later we

1 don't have any response from the
2 Justice Department, so --

3 Q In his May 2nd email it said, why has
4 nothing been done in response to my months' old
5 request?

6 A That is what it says, yes.

7 Q So the Secretary had been asking about
8 this since the early spring of 2017?

9 A Yes.

10 Q And you testified and this memo says you
11 met in person with Mary Blanche and she said what?

12 A Well, as I said, she directed me to
13 James McHenry.

14 Q And then after speaking with Mr. McHenry,
15 he told you what?

16 A He directed me to Gene Hamilton.

17 Q Okay. And then after several phone calls
18 with Gene Hamilton, according to this memo, he
19 relayed that, "After discussion, DHS really felt
20 it was best handled by the Justice Department."

21 Do you see that?

22 A I see that.

1 Q Why did Mr. Hamilton feel this was best
2 handled by the Justice Department?

3 A As relayed to me, DHS felt the agency
4 that would most utilize this data was
5 Department of Justice, which was our
6 original conclusion.

7 Q So DHS said they were not going to make
8 this request, right?

9 A Well, Gene never made a commitment, one
10 way or the other, for the department. He simply
11 directed me back to the other department. It's
12 not an uncommon experience in the federal
13 government.

14 Q Tell me what's not uncommon in the
15 federal government.

16 A Being directed to somebody.

17 Q Your memo then says at that point the
18 conversation ceased.

19 A Correct.

20 Q What do you mean by that?

21 A Means that I did not talk to
22 Mary Blanche, James McHenry or Gene Hamilton after

1 that point in time.

2 Q You didn't, at this point, have a request
3 from the Justice Department, right?

4 A That's correct.

5 Q Okay. And what did you ask
6 James Uthmeier after that point?

7 MR. GARDNER: Objection. Calls for
8 information --

9 (Thereupon, the court reporter
10 clarified.)

11 MR. GARDNER: Sorry. I have a cold.

12 Objection. Calls for information that's
13 subject to privilege. I'll instruct the witness
14 not to answer.

15 MR. GERSCH: What privilege?

16 MR. GARDNER: Attorney -- thank you. I
17 thought we were doing one at a time.

18 Attorney-client privilege.

19 MR. GERSCH: Sorry.

20 BY MR. COLANGELO:

21 Q Did you identify any facts for
22 Mr. Uthmeier?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: Can you restate the
3 question?

4 BY MR. COLANGELO:

5 Q Sure. When you -- was this your first
6 contact with Mr. Uthmeier on the topic of the
7 citizenship question?

8 A Well, you mean this memo or this
9 reference?

10 Q This reference.

11 A Well, it says -- at this -- at that
12 point, the conversation ceased, and I asked
13 James Uthmeier, who had by then joined -- this is
14 referring back in time. I don't know exactly when
15 James joined OGC, but it was before September, so
16 I think he joined -- I don't know -- in June
17 maybe. I don't know.

18 Q I understand this memo to be a reference
19 to discussions you had with the Justice Department
20 in May; is that right?

21 A It doesn't exactly specify the time
22 frame, but, yes, from early May when I met with

1 Mary Blanche, through when my conversations with
2 Gene Hamilton ceased, I don't know exactly what
3 that time frame was. It was four or six weeks.

4 Q So I'm asking before May of 2017, had you
5 ever discussed the citizenship question with
6 James Uthmeier?

7 A And I cannot answer that directly,
8 because I don't recall when James Uthmeier joined
9 the department.

10 Q Okay. So you do recall discussing the
11 citizenship question with him, but you don't
12 remember when it was?

13 A Yes.

14 Q And you don't remember if it was before
15 May or June of 2017?

16 A Well, it couldn't have been before he
17 joined the department, so whenever that was.

18 Q Is it your understanding that
19 Mr. Uthmeier had a position in the Department of
20 Commerce that was not within the Office of
21 General Counsel and he was then moved into a
22 position in the Office of General Counsel?

1 MR. GARDNER: Objection to form.

2 THE WITNESS: To my knowledge, the first
3 time I interacted with James, he was in the
4 Office of General Counsel.

5 MR. COLANGELO: Okay. Okay. Let's mark
6 Exhibit 16.

7 (Plaintiffs' Exhibit 16, Memo, was
8 marked.)

9 BY MR. COLANGELO:

10 Q Exhibit 16 is document stamped 2458.

11 Do you have Exhibit 16 in front of you,
12 Mr. Comstock?

13 A I do.

14 Q Have you seen this email before?

15 A Not since I've sent it to Wendy on
16 Saturday the 16th of September.

17 Q Why did you send Ms. Teramoto your
18 September 8th memo on September 16, 2017?

19 A I don't recall exactly, but, likely,
20 because she may have been setting up the call with
21 the Attorney General.

22 Q And which call with the Attorney General

1 was that?

2 A A call from the Secretary to talk to the
3 Attorney General about whether or not Justice
4 would be interested in a citizenship question.

5 Q And why was the Secretary talking to the
6 Attorney General about whether or not Justice
7 would be interested in the citizenship question?

8 A Again, if -- if the -- if the
9 Justice Department was not going to request the
10 question, had no use for the information, then
11 that would probably put an end to the citizenship
12 question.

13 Q And the Secretary wanted the citizenship
14 question?

15 A I think he felt -- well, I don't know
16 what he felt. Yes. He was continuing to explore
17 that possibility.

18 MS. BOUTIN: I'm sorry. Can you speak
19 up?

20 THE WITNESS: I don't know what he felt,
21 but he was continuing to explore the possibility.

22 BY MR. COLANGELO:

1 Q And when did the Secretary speak with the
2 Attorney General?

3 A I don't know that.

4 Q Were you on that call?

5 A I don't recall being on the call.

6 Q Who else was on the call?

7 A I don't know.

8 Q Okay. Did -- did Wendy ask to see this
9 memo, or did you send it to her without her
10 asking?

11 A Again, I don't recall the context, but
12 based on what the memo says, it appears she might
13 have asked --

14 (Thereupon, the court reporter
15 clarified.)

16 THE WITNESS: For it.

17 BY MR. COLANGELO:

18 Q Okay. I want to go back for a second
19 here, May 2nd email --

20 MR. GARDNER: Which exhibit number?

21 MR. COLANGELO: This is Exhibit --

22 MR. GARDNER: Oh, the 12 --

1 MR. COLANGELO: This is Exhibit -- no. I
2 was thinking of Exhibit 10.

3 BY MR. COLANGELO:

4 Q How did you come to the view before ever
5 talking to DOJ that DOJ should request this
6 information?

7 A Again, if DOJ was the governmental
8 organization that had questioned the information
9 on the ACS, then it would stand to reason that
10 they would be the people that would also be
11 interested in the information on the decennial,
12 and they're also the party responsible for
13 enforcing the voting rights.

14 Q And how did you come to the view before
15 ever talking to DOJ that DOJ had a legitimate need
16 for the question to be included?

17 A If they enforced the Voting Rights Act --
18 if you're going to make a Voting Rights Act case,
19 then they would be the people that would
20 have -- need the information.

21 Q And you researched those Voting Rights
22 Act cases or that Voting Rights case on your own?

1 A Again, I think in doing some basic
2 research on it, it was pointed out there was a
3 case where the Court had said you could -- you
4 would need more granule information to answer this
5 question, which would then support a citizenship
6 question.

7 Q And you told me before that you're not a
8 voting rights lawyer, right?

9 A Again, what do you mean by a voting
10 rights lawyer?

11 Q Have you ever practiced voting rights
12 law?

13 A No.

14 Q Have you ever tried a voting rights case?

15 A No.

16 Q Have you ever advised a client on a
17 voting rights matter?

18 A No.

19 Q Have you ever practiced redistricting
20 law, tried a redistricting case --

21 A No.

22 Q -- or advised a client on a redistricting

1 matter?

2 A No.

3 MR. GARDNER: Make sure he finishes his
4 question before you answer.

5 THE WITNESS: No.

6 BY MR. COLANGELO:

7 Q Have you ever litigated a case under the
8 Voting Rights Act?

9 A No.

10 Q Have you ever litigated a redistricting
11 case?

12 A No.

13 MR. COLANGELO: Let's mark as Exhibit 17
14 a document Bates-stamped 3705.

15 (Plaintiffs' Exhibit 17, Meeting
16 notification, was marked.)

17 BY MR. COLANGELO:

18 Q Mr. Comstock, do you have 3705 in front
19 of you?

20 A I do.

21 Q And what is this?

22 A It appears to be some kind of meeting

1 notification.

2 Q Okay. Does this help you date your
3 interactions with Mr. Uthmeier regarding the
4 citizenship question?

5 A Well, it appears that we might have had a
6 meeting on the 28th of June, 2017.

7 Q And does this help you answer my earlier
8 question regarding whether this was your earliest
9 discussion with Mr. Uthmeier on the citizenship
10 question or whether you, in fact, spoke to him
11 before that?

12 MR. GARDNER: Objection. Form.

13 THE WITNESS: Again, I don't recall when
14 James started working for the department. I don't
15 recall when we had our first conversation on the
16 citizenship question.

17 BY MR. COLANGELO:

18 Q And what did you tell Mr. Uthmeier in
19 that conversation?

20 MR. GARDNER: Objection to the extent it
21 calls for disclosure of information subject to the
22 attorney-client privilege. To the extent it does,

1 I would instruct the witness not to answer.

2 Can you answer the question without
3 disclosing confidential communications?

4 THE WITNESS: I have no recollection of
5 this meeting, so I couldn't tell you what we
6 discussed.

7 MR. GARDNER: Problem solved.

8 BY MR. COLANGELO:

9 Q Easy enough.

10 Was this your first interaction with the
11 Office of General Counsel on this issue?

12 A Again, I have no idea.

13 Q As you were talking to Ms. Hankey at the
14 Justice Department, Mr. McHenry at the
15 Justice Department and Mr. Hamilton at DHS --

16 A Yeah.

17 Q -- in the spring of 2017, were you
18 keeping the Secretary informed of those
19 conversations?

20 A I might have mentioned them.

21 Q In what context would you have mentioned
22 them?

1 A Mr. Secretary, I contacted the
2 Justice Department today. I would not have
3 given -- I mean, there was nothing to report. So
4 I hadn't made any progress.

5 Q Well, he was frustrated there was no
6 request yet?

7 A Right.

8 Q So one of the things to report might have
9 been --

10 A That I contacted them, yes.

11 Q Okay. And did you keep Ms. Teramoto
12 informed during that time period?

13 A Again, I might have. At that time
14 period, we operated in bullpens, so we were
15 all -- there were five people in the same room.
16 So it's entirely possible I might have mentioned I
17 was going to the Justice Department or I had
18 spoken with the Justice Department, yes.

19 Q I'm sorry. If you were not finished.

20 A Nope.

21 Q Who was sitting in the bullpen with you?

22 A Wendy Teramoto, Eric Branstad,

1 James Rockas, me, and occasionally Izzy Hernandez.

2 Q Who is James Rockas?

3 A He was acting press secretary at the
4 time.

5 Q And who is Izzy Hernandez?

6 A Israel Hernandez, he was the acting -- or
7 I'm not sure what his formal title was. I think
8 he was deputy chief of staff.

9 Q And where was the bullpen you referred
10 to?

11 A It was the -- what is now the chief of
12 staff.

13 Q And there were five of you working in the
14 office?

15 A Correct.

16 Q How long were the five of you working in
17 that office together?

18 A Maybe nine months.

19 Q So from January of 2018 through the
20 end -- strike that.

21 From January 2017 through the end of
22 the --

1 A No.

2 Q -- summer --

3 A No. The bullpen was set up, I think, in
4 March through the end of the year.

5 Q Why did you work in a bullpen?

6 A Because that was the form that the
7 Secretary and Ms. Teramoto felt was most
8 effective.

9 Q And was it near the Secretary's office?

10 A It's located -- there's the Secretary's
11 office, there's the anteroom to the Secretary's
12 office, and it's located right next to that.

13 Q And at some point, you stopped working in
14 a bullpen?

15 A Yes.

16 Q Did it become less effective?

17 A I think that was the chief of staff's
18 determination, yes.

19 MR. COLANGELO: Let's mark Document 3702
20 as Exhibit 18.

21 (Plaintiffs' Exhibit 18, Email, was
22 marked.)

1 BY MR. COLANGELO:

2 Q Mr. Comstock, do you have Exhibit 18 in
3 front of you?

4 A I do.

5 Q Have you seen this document before?

6 A No.

7 Q Okay. And you testified before that
8 Mr. Langdon works for you in the Office of Policy
9 and Strategic Planning, correct?

10 A Yes.

11 Q His -- if you go to the second page of
12 this exhibit, the page stamped 3703, Mr. Langdon
13 says, "I apologize for not answering sooner, but I
14 honestly have been in meetings with SWR all
15 afternoon."

16 Do you see that?

17 A Yes.

18 Q And do you understand SWR to refer to
19 Secretary Wilbur Ross?

20 A Yes.

21 Q What meetings was he referring to?

22 MR. GARDNER: Objection. Calls for

1 speculation. Lack of foundation.

2 THE WITNESS: I don't know.

3 BY MR. COLANGELO:

4 Q Were you in meetings with the Secretary
5 and David Langdon on May 24th of 2017?

6 A It's entirely possible.

7 Q Is it common for staff in the Office of
8 Policy to attend meetings with the Secretary that
9 you wouldn't be in?

10 A Not common, but it would -- at that time
11 frame, it would depend on what else I was working
12 on. I might have been off working on sugar
13 negotiations, saw-fit lumber --

14 (Thereupon, the court reporter
15 clarified.)

16 THE WITNESS: I said I might have been
17 working on sugar negotiations, which were going on
18 at the time. We have a saw-fit lumber case. We
19 were beginning work on steel 232 investigation.
20 We had fisheries issues. So any number of things
21 could have kept me from the meeting.

22 BY MR. COLANGELO:

1 Q Okay. And if you weren't in the meeting,
2 would it be typical for Ms. Teramoto to be there?

3 A Again, it would depend on what her
4 schedule was.

5 Q Okay. You'll see from this email at the
6 top of Page 3702, that David Langdon is reporting
7 to several people, quote, the Secretary seemed
8 interested on subjects and puzzled why citizenship
9 is not included in 2020.

10 Do you see that?

11 A Yes.

12 Q Okay. Do you remember a meeting where
13 the Secretary was puzzled why citizenship was not
14 included?

15 A I don't recall such a meeting, but --

16 Q And why does Mr. Langdon say the
17 Secretary seemed puzzled why citizenship is not
18 included?

19 MR. GARDNER: Objection. Calls for
20 speculation.

21 THE WITNESS: Again, the Secretary was
22 clear. He did not understand why a citizenship

1 question was not included, so he asked us to look
2 into the matter.

3 BY MR. COLANGELO:

4 Q Okay. And then you see that Mr. Langdon
5 sent the email to Lisa Blummerman. Am I saying
6 that right?

7 A I think it's pronounced Blummerman.

8 Q Okay. Mr. Langdon sent the email to
9 Lisa Blummerman at 10:51 p.m. on May 24.

10 Can you tell me who Ms. Blummerman is?

11 A She was -- I believe at the time, in some
12 kind of acting capacity. I don't know if she was
13 the acting deputy director or whether she was the
14 person in charge of budget. If you notice further
15 down in the conversation, Lisa and I are happy to
16 discuss the lifecycle stuff, which was beginning
17 to become an issue. So Lisa, to my recollection,
18 is largely budget side.

19 Q Is it your understanding that at the
20 time, Ms. Blummerman was the associate director
21 for decennial programs?

22 A That's entirely possible.

1 Q And is the associate director for
2 decennial programs effectively the head of 2020
3 census?

4 A I believe that's correct, yes.

5 Q And you see that Mr. Langdon has asked
6 Ms. Blumnerman for an answer on the citizenship
7 question ideally this evening?

8 A That's what his mail says.

9 Q Okay. It's fair to say that this was a
10 matter of some urgency?

11 MR. GARDNER: Objection. Form.

12 THE WITNESS: Again, one of the biggest
13 roles that I play is expediting things along.
14 Because you have people from the private sector
15 who are used to a much faster speed than the
16 government usually operates at. So we spend a lot
17 of time expediting things to get things back in
18 place. So this is not uncommon for us to say
19 everything the Secretary is requesting is urgent.
20 BY MR. COLANGELO:

21 Q Let's go back to Exhibit 7. Do you have
22 that in front of you?

1 A Just a minute.

2 Yes.

3 Q Okay. And Exhibit 7 is the email
4 exchange with Kris Kobach; is that right?

5 A It's an email exchange between
6 Kris Kobach and Wendy Teramoto.

7 Q And the Secretary, correct, on the second
8 page?

9 A Yes. Appears to be one to the Secretary
10 on the second page.

11 Q Okay.

12 A Though it's blanked out as to who it goes
13 to.

14 Q If I represent to you that the government
15 has represented to us that this was an email to
16 the Secretary and that they've blanked out his
17 name for personal privacy reasons, can we agree
18 that it's an email to the Secretary on July 14th?

19 A I'll stipulate to that, yes.

20 Q And Mr. Gardner will tell me after lunch
21 if that's wrong.

22 The -- so you see that the -- that

1 Mr. Kobach, who identifies himself as the Kansas
2 Secretary of State, emailed the Secretary on
3 July 14, 2017, correct?

4 A Correct.

5 MR. GARDNER: Objection. Lack of
6 foundation.

7 BY MR. COLANGELO:

8 Q And you'll see that it says I'm following
9 up on our telephone discussion from a few months
10 ago, correct?

11 MR. GARDNER: Objection. Lack of
12 foundation.

13 THE WITNESS: And you're reading from the
14 email. So I have no idea if the email is correct
15 or not.

16 BY MR. COLANGELO:

17 Q Did the Secretary ever tell you that he
18 spoke to Kris Kobach?

19 MR. GARDNER: Objection. Asked and
20 answered.

21 BY MR. COLANGELO:

22 Q You can still answer.

1 A No.

2 Q Sorry. We were speaking at the same
3 time.

4 A I don't recall him ever telling me that
5 he spoke to Kris Kobach.

6 Q This email reads, "As you may recall, we
7 talked about the fact that the U.S. Census does
8 not currently ask respondents their citizenship."

9 Do you see that?

10 A I see that.

11 Q The email also reads, "It also leads to
12 the problem that aliens who do not actually reside
13 in the United States are still counted for
14 Congressional apportionment purposes."

15 Do you see that?

16 A I see that.

17 Q Did the Secretary ever tell you he was
18 concerned about the problem that aliens who do not
19 reside in the United States are still counted for
20 Congressional apportionment purposes?

21 A He never expressed an opinion on that.

22 Q And when the Secretary asked you on

1 March 10, 2017 about the census and the
2 citizenship question, did he ask you in the
3 context of whether noncitizens should be included
4 for Congressional apportionment purposes?

5 A He discussed Congressional apportionment
6 purposes. If asked were the noncitizens counted,
7 and we answered the question, which is they are
8 counted.

9 Q Well, you testified the link you sent him
10 was the link to the Census Bureau's web page on
11 whether noncitizens are counted for apportionment?

12 A That's correct. Well, I don't believe
13 you can find a web page on the Census that doesn't
14 speak to it in that context, whether noncitizens
15 are counted other than for apportionment. That's
16 the question that we asked. Do we count
17 noncitizens? The answer is yes. What is the
18 Census used for? It's used for apportionment.
19 That's its primary function.

20 Q And you'll see that -- going back to the
21 first page of Exhibit 7, Ms. Teramoto has written
22 to Mr. Kobach, "Kris, can you do a call with the

1 Secretary and Izzy tomorrow at 11:00 a.m.?"

2 A Correct.

3 Q And that's Izzy Hernandez, correct?

4 A I would believe that's the reference
5 she's making, yes.

6 Q And he's copied at the top of this page,
7 correct?

8 A Yes, he is.

9 Q Did you ever discuss with Izzy Hernandez
10 a call with Mr. Kobach and the Secretary?

11 A I did not.

12 Q Did you ever discuss the citizenship
13 question with Mr. Hernandez, at all?

14 A I think we discussed it once or twice.

15 Q And when were those conversations?

16 A I don't recall exactly.

17 Q Was it in the summer of 2017?

18 A It was sometime in the spring/summer of
19 2017.

20 Q Okay. So you had been working on the
21 citizenship question for some number of months by
22 late July of 2017; is that right?

1 A Correct.

2 Q Okay. But your testimony is that the
3 Secretary had a phone call with Kris Kobach on
4 that issue and nobody told you about it?

5 MR. GARDNER: Objection.
6 Mischaracterizes the witness's testimony.

7 THE WITNESS: My testimony is he did not
8 discuss it with me.

9 BY MR. COLANGELO:

10 Q Did anyone tell you that the Secretary
11 spoke to Kris Kobach about this issue?

12 A Wendy might have mentioned it.

13 Q And what do you remember Wendy said about
14 it?

15 A That the Secretary had a conversation
16 with Kris Kobach.

17 Q What did she describe about that phone
18 call?

19 A She didn't.

20 Q And did you ask for any other information
21 on it?

22 A I didn't.

1 Q On an issue that you'd been working on
2 for five months?

3 A It's not really relevant to the process I
4 was working on.

5 MR. COLANGELO: Mr. Gardner, is now a
6 good time for a lunch break? I have another --

7 THE WITNESS: Or you can keep going.

8 MR. COLANGELO: -- feeling this might be
9 a good time to stop.

10 MR. GARDNER: How much -- how much more
11 time do you think you have, because I think the
12 witness is fine to keep going if you-all are?

13 MR. COLANGELO: Well, we have a lot of
14 people here, and a court reporter and a
15 videographer. So I'd rather take a short break
16 and then -- I probably have -- why don't you let
17 me look at my notes, I'll tell you once we're off
18 the record --

19 MR. GARDNER: Sure.

20 MR. COLANGELO: -- how much time we left.

21 MR. GARDNER: Sure.

22 VIDEOGRAPHER: This concludes Media

1 Unit 3. The time is 12:32 p.m. We are off the
2 record.

3 (Off the record.)

4 VIDEOGRAPHER: This begins Media Unit
5 Number 4. The time on the video is 1:19 p.m. We
6 are on the record.

7 BY MR. COLANGELO:

8 Q Welcome back.

9 A Good to be back.

10 MR. COLANGELO: Let's mark Document 4004
11 as Exhibit 18.

12 MR. GARDNER: I think 19.

13 MR. COLANGELO: 19. Thank you.

14 (Plaintiffs' Exhibit 19, Email, was
15 marked.)

16 BY MR. COLANGELO:

17 Q Mr. Comstock, do you have Exhibit 19 in
18 front of you?

19 A I do.

20 Q And do you recognize this email?

21 A I sent it, so --

22 Q Have you seen it before today?

1 A Well, obviously, when I wrote it.

2 Q Okay. This is an email from the
3 Secretary to you on August 8, 2017, and the
4 Secretary asks were you on the call this morning
5 about census?

6 Do you see that?

7 A Uh-huh.

8 Q What call is he referring to?

9 A I don't know. I'm not sure I was on it.

10 Q Okay. Did you hear from anybody about a
11 call on the census on August 8th?

12 A I have no idea.

13 Q And you'll see that later in the email,
14 the Secretary says, "Where is the DOJ in their
15 analysis? If they still have not come to a
16 conclusion, please let me know your contact person
17 and I will call the AG. Wilbur Ross."

18 Do you see that?

19 A I see that.

20 Q And what analysis is the Secretary
21 referring to?

22 A Again, this pre-dates the memo I wrote

1 outlining my contacts with the DOJ. So this is a
2 question about where are we with the DOJ?

3 Q Okay. And you wrote back that evening
4 saying, "We'll be back shortly with an update on
5 the census question."

6 A Yes.

7 Q I have two attorneys in the DOC's general
8 counsel's office working on it?

9 A Yes.

10 Q And you testified one of those two
11 attorneys was James Uthmeier; is that right?

12 A That's correct.

13 Q And who was the other?

14 A I don't recall.

15 Q Okay. Going back to the Secretary's
16 email where he says, "If they still have not come
17 to a conclusion, please let me know your contact
18 person and I will call the AG."

19 A Yes.

20 Q Did you understand that to mean that the
21 Secretary was concerned this was not done yet?

22 A He was concerned that we had not made

1 more progress.

2 Q Okay. How did he communicate that
3 concern to you?

4 A By saying let me know who your contact
5 person is and I will call the AG.

6 Q This email that you sent in your response
7 doesn't identify your contact person; is that
8 right?

9 A That -- well, at least not in the part
10 that's not blacked out.

11 Q Okay. Do you recall identifying for the
12 Secretary before the September 8, 2017 memo who
13 your contact person was at DOJ?

14 A I might have. I probably would have had
15 to go back and look and see who I spoke to.

16 Q Okay.

17 MR. COLANGELO: Let's mark Document 3984
18 as Exhibit 20.

19 (Plaintiffs' Exhibit 20, email, was
20 marked.)

21 THE WITNESS: Thank you.

22 BY MR. COLANGELO:

1 Q Mr. Comstock, have you seen this email
2 before?

3 A It's to me, so, yes.

4 Q Okay. And this is in further response to
5 the Secretary's August 8th question; is that
6 right?

7 A Would appear to be, yes.

8 Q Okay. And it says, "Mr. Secretary, we
9 are preparing a memo and full briefing for you on
10 the citizenship question. The memo will be ready
11 by Friday, and we can do the briefing whenever you
12 are back in the office."

13 Do you see that?

14 A Yes.

15 Q And at this point, you had not received
16 any information from the Justice Department; is
17 that right?

18 A That's correct.

19 Q Okay. So the memo that you're referring
20 to is a memo on the citizenship question that
21 includes no input from DOJ; is that right?

22 A I -- I don't know. I had not spoken to

1 DOJ, no.

2 Q You're not aware that anyone else had
3 spoken to DOJ on it?

4 A Actually, I believe counsel might have
5 been talking to DOJ, but I don't know who they
6 were talking to.

7 Q And which counsel is that?

8 A James Uthmeier.

9 Q And did he tell you he was talking to
10 DOJ?

11 A I don't recall.

12 Q So you're not aware that anybody had been
13 in touch with DOJ in order to get information for
14 this memo going to the Secretary?

15 A I -- I'm not sure exactly the contents of
16 the memo to which you're referring, so I don't
17 know if it contained information from DOJ or not.

18 Q And the Secretary responded by saying, "I
19 would like to be briefed on Friday by phone."

20 A Yes.

21 Q So it's fair to say that this reflects
22 the Secretary's continued impatience about getting

1 an answer to his question?

2 A I would say he clearly wanted to keep
3 moving forward.

4 MR. COLANGELO: Let's mark as 21
5 Document 3983.

6 (Plaintiffs' Exhibit 21, email, was
7 marked.)

8 THE WITNESS: Thank you very much.

9 BY MR. COLANGELO:

10 Q Do you have Exhibit 21 in front of you?

11 A Yes.

12 Q Okay. And this is an email from you to
13 the Secretary passing along the draft memo on the
14 citizenship question?

15 A Correct.

16 Q Okay. And you'll see that Wendy Teramoto
17 responded a few days later saying, "Peter Davidson
18 and Karen Dunn Kelley will both be here Monday.
19 Let's spend 15 minutes together and sort this
20 out."

21 A Right.

22 Q And who is Peter Davidson?

1 A He is the Department of Commerce general
2 counsel who was arriving about that time, so --

3 Q Who is Karen Dunn Kelley?

4 A She is -- well, she would have been
5 coming in as the Under Secretary for economic and
6 statistics or whatever the name of the bureau is.
7 So she would have been arriving about that time,
8 as well. She -- I think they got confirmed around
9 the same time.

10 Q And this is the transmittal of the memo
11 that you described in the earlier emails we talked
12 about that you and OGC were preparing on the
13 citizenship question for the Secretary?

14 A That's [sic] appears to be what it is
15 referencing, but I don't have the draft memo so I
16 can't tell you for sure.

17 MR. COLANGELO: Okay. Let's mark as
18 Exhibit 22 Document 1411.

19 (Plaintiffs' Exhibit 22, Email, was
20 marked.)

21 BY MR. COLANGELO:

22 Q Do you have Exhibit 22 in front of you?

1 A I do. I'm reading it.

2 Q Do you need a moment to look it over?

3 A Yeah.

4 Okay.

5 Q Okay. And have you seen this document
6 before?

7 A Again, I sent the email, so yes.

8 Q And can you tell me what this document
9 reflects?

10 A It reflects an email exchange about
11 setting up a meeting.

12 Q Okay. And this was a meeting on the
13 citizenship question, right?

14 A This was a meeting on key legal
15 questions.

16 Q Regarding the census?

17 A It actually -- well, the subject matter
18 is census, so presumably.

19 Q And it involves you, Ms. Teramoto,
20 Mr. Hernandez, Mr. Uthmeier, Ms. Davidson,
21 Ms. Kelley, correct?

22 A That's the list, yes.

1 Q And we just saw an email from a few weeks
2 earlier where Ms. Teramoto says let's keep
3 Mr. Davidson and Ms. Kelley involved in a
4 conversation about this, right?

5 A I wouldn't say keep, but --

6 Q Introduce them to this conversation?

7 A Introduce, yes.

8 Q So to your understanding, this was a
9 meeting to discuss the citizenship question?

10 A Again, my understanding of this was to
11 discuss key legal issues regarding the census.

12 Q Do you remember this meeting?

13 A Not specifically, no.

14 Q Do you remember any meetings with the
15 Secretary and with this group on the census?

16 A Again, not specifically, no.

17 MR. COLANGELO: Okay. Let's have this
18 marked as Exhibit 23. It's Document 2424.

19 (Plaintiffs' Exhibit 23, Email, was
20 marked.)

21 BY MR. COLANGELO:

22 Q Do you have Exhibit 23 in front of you,

1 Mr. Comstock?

2 A I do.

3 Q And do you recognize this document?

4 A Again, it's an email from the Secretary
5 to me, so presumably I saw it then. There's a lot
6 blanked out.

7 Q And you understand that the
8 Justice Department has applied those redactions,
9 correct?

10 A I do.

11 Q And in this email dated September 1,
12 2017, the Secretary says, "I have received no
13 update, nor has there been an updated," -- blocked
14 out -- "nor the issue of the census question, nor
15 whether KDB thinks we have our arms around the
16 census cost data."

17 Do you see that?

18 A Yes.

19 Q And by KDB, do you think he meant KDK?

20 A I believe that would be who he would be
21 referring to, yes.

22 Q Referring to Karen Dunn Kelley?

1 A Yes.

2 Q And did you understand this to be a
3 request for information on the status of the
4 citizenship question?

5 A Well, I understood this to be a request
6 for information on a whole series of information
7 that were presented in the census.

8 Q Including the citizenship question?

9 A Including the citizenship. He mentions
10 that.

11 Q And the Secretary is frustrated, right?

12 A That would appear so, yes.

13 Q He's frustrated because he's asked for it
14 repeatedly and hasn't seen anything yet telling
15 him that it's done; is that right?

16 A Well, I would not agree with your
17 characterization. I think what this memo -- this
18 email shows is that there were a tremendous number
19 of issues connected to Census. At this time, we
20 were working a tremendous amount on the lifecycle
21 cost estimate.

22 So we -- I mean, we had a huge issue.

1 They were \$3 billion -- basically, 25 percent of
2 their budget off, which is a shocking figure --

3 Q Does the Secretary --

4 MR. GARDNER: Let him finish his answer.

5 THE WITNESS: -- that does not inspire
6 confidence in the Census Bureau or its current
7 leadership at the time. So we were dealing with
8 quite a few issues connected with Census,
9 primarily related to the budget, trying to find
10 people to run the Census that we could count on.
11 So, yes, citizenship was one small piece
12 of this, but it was by no means the driving piece.

13 Q Thank you.

14 MR. COLANGELO: Let's mark Document 2034
15 as Exhibit 24.

16 (Plaintiffs' Exhibit 24, Email, was
17 marked.)

18 BY MR. COLANGELO:

19 Q Mr. Comstock, do you have Exhibit 24 with
20 you?

21 A I do.

22 Q Have you seen this email before?

1 A Again, it's an email from me to Peter
2 and -- Davidson and James Uthmeier, it looks like,
3 yes.

4 Q And when's the last time you saw this
5 email before today?

6 A Probably when I sent it on September 7,
7 2017.

8 Q And you are advising Peter and James,
9 quote, as I discussed with James a little while
10 ago, the Secretary would like an update on
11 progress since the discussion yesterday regarding
12 the citizenship question.

13 A That's what it says.

14 Q And do you recall the discussion the day
15 before with the Secretary regarding the
16 citizenship question?

17 A I don't recall the specifics of that
18 discussion, no.

19 Q There was a discussion on September 6th
20 regarding the citizenship question?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, based on the email,

1 it appears there might have been.

2 BY MR. COLANGELO:

3 Q And why would the Secretary have asked
4 for an update by the next day?

5 MR. GARDNER: Objection. Calls for
6 speculation.

7 THE WITNESS: As I've mentioned before,
8 we like to get things done. We're not here to do
9 this all year long. So I was asked similar
10 questions on numerous other issues I was working
11 on.

12 BY MR. COLANGELO:

13 Q But it's fair to say the Secretary wanted
14 an answer quickly?

15 A He always wants an answer quickly.

16 MR. COLANGELO: Let's mark Document 2395
17 as Exhibit 25.

18 (Plaintiffs' Exhibit 25, Email, was
19 marked.)

20 BY MR. COLANGELO:

21 Q Mr. Comstock, do you have Exhibit 25?

22 A I do.

1 Q Okay. Have you seen this document
2 before?

3 A Yes.

4 Q When's the last time you saw it before
5 today?

6 A Yesterday counsel pointed it out to me.

7 Q And did you review a version yesterday
8 that was redacted like this or unredacted?

9 A I did.

10 Q Pardon me?

11 A It was redacted.

12 Q Okay. Like this?

13 A Exactly like this.

14 Q And this is an email from Mr. Uthmeier to
15 you on the evening of September 7th saying, "Earl,
16 I touched base with Peter," redacted, "He spoke
17 with Kassinger this evening."

18 Do you see that?

19 A Yes.

20 Q Who is Kassinger?

21 A That would be Ted Kassinger, former
22 general counsel for the Department of Commerce.

1 Q And where does Mr. Kassinger work now?

2 A He works at O'Melveny & Myers.

3 Q A law firm?

4 A Correct.

5 Q In Washington?

6 A Yes.

7 Q And what did Mr. Davidson and
8 Mr. Kassinger discuss?

9 MR. GARDNER: Objection -- sorry.

10 Restate that one more time.

11 BY MR. COLANGELO:

12 Q What did Mr. Davidson and Mr. Kassinger
13 discuss?

14 A I don't know.

15 Q Did Mr. Davidson tell you what he and
16 Mr. Kassinger discussed?

17 A Not to my knowledge.

18 Q Did Mr. Uthmeier tell you what he and
19 Mr. Kass- -- what Mr. Davidson and Mr. Kassinger
20 discussed?

21 A Well, it appears he might have, but it's
22 blanked out.

1 Q And Mr. Kassinger doesn't work for the
2 government, correct?

3 A Correct.

4 Q And did not at the time, correct?

5 A Correct.

6 I would just observe, based on the all
7 blanked out here, we really have no idea what this
8 email is referring to. It says a Census matter,
9 but it could have been any number of things,
10 including the numerous budget issues we were
11 talking about. So let's make clear I don't know
12 what this email was in reference to.

13 Q Okay. Let's take a look at Exhibit 24.

14 A Uh-huh.

15 Q So this appears to be an unredacted
16 version --

17 A Of the last part.

18 Q -- of the last part --

19 A Right.

20 Q -- which appears to be redacted on 2396;
21 is that correct?

22 A That certainly seems to be the case, yes.

1 Q They're both dated the same date,
2 correct?

3 A Same date, same time.

4 Q So --

5 A Just to be precise.

6 Q Thank you. Same date and same time, to
7 be precise.

8 So on an email chain that you commenced
9 by saying the Secretary would like an update on
10 progress since the discussion yesterday regarding
11 the citizenship question. Is it your
12 understanding that the reference to the Census
13 matter in the subject line, in fact, refers to the
14 citizenship question?

15 A That would appear to be the case.

16 Q Okay. So it would also be your
17 conclusion that Mr. Davidson and Mr. Kassinger
18 were talking about the citizenship question; is
19 that right?

20 A No. It would not.

21 Q Why not?

22 A Because I get lots of email that start on

1 one chain that go to another matter. So it's
2 possible, but it's also possible it was discussing
3 something else.

4 Q And did the general counsel talk to
5 Mr. Kassinger about a lot of issues you were
6 updated on?

7 A I have no idea what Mr. Davidson and
8 Mr. Kassinger discussed.

9 Q Do you see the email below the Kassinger
10 reference?

11 A Uh-huh.

12 Q There's a message from you to
13 Mr. Davidson, Mr. Uthmeier and Ms. Teramoto that
14 says, "I suggest setting up a call for tomorrow.
15 The Secretary is asking for progress on this."

16 A Correct.

17 Q And that's a reference to the citizenship
18 question, correct?

19 A Without seeing the blanked out matter
20 below that from Peter Davidson, I don't know if
21 the email chain switched subjects or not.

22 Q Okay. So your -- your testimony is that

1 even though you emailed Mr. Davidson and
2 Mr. Uthmeier about the citizenship question, and
3 they email you within an hour, and then you said
4 the Secretary is asking for progress on this,
5 you're not prepared to say it was about
6 citizenship question?

7 A Without seeing the redacted material, I
8 can't confirm whether it's about the citizenship
9 question or whether we switched gears to another
10 topic. That happens frequently.

11 Q Were there a lot of -- strike that.

12 And the next day is the day that you sent
13 the Secretary your memo on DOJ contacts; is that
14 correct?

15 It's Exhibit 15, if that helps.

16 A Yes. The next day I sent him on my
17 discussions DOJ.

18 Q And so the Secretary was asking for
19 updates on the citizenship question, you prepared
20 a memo on your contacts with DOJ, and you asked
21 the general counsel's office to prepare their own
22 data; is that right?

1 A Again, I think -- I would agree that I
2 sent an email on the 7th asking for an update on
3 progress regarding the citizenship question, and I
4 would agree that I sent a memo to the Secretary
5 updating him on who I had spoken to at Justice.
6 But that's all I would know about what the
7 substance of the conversations were.

8 Q And then after that exchange, did there
9 come a time when the Secretary and Attorney
10 General spoke about this issue?

11 A Correct.

12 Q And about how long after was that?

13 A I don't recall.

14 Q Was it about a week after?

15 A Possibly. I would imagine it was on the
16 Secretary's calendar.

17 Q And after the Secretary spoke with the
18 Attorney General, was the substance of that
19 conversation relayed to you?

20 A Beyond -- beyond the fact that they had
21 spoken and that the Attorney General was going to
22 look into the matter, no.

1 Q Beyond that they had spoken and the
2 Attorney General would look into it --

3 A Correct.

4 Q -- nothing else was conveyed to you?

5 A Right.

6 Q This was an issue you had been working on
7 for eight, nine months at this point?

8 A Along with about 60 other issues.

9 Q But this was one issue that you'd been
10 working on for eight or nine months, correct?

11 A Let's see, September -- no. I had not
12 been working on it for eight or nine months.
13 That's an overcharacterization. I'd been working
14 on it for no more than seven months.

15 Q Since very shortly after the Secretary
16 was confirmed, correct?

17 A Correct.

18 MR. COLANGELO: And let's mark as
19 Exhibit 26 document stamped 2651.

20 (Plaintiffs' Exhibit 26, Email, was
21 marked.)

22 BY MR. COLANGELO:

1 Q You have 2651 in front of you?

2 A I do. I'm reading it.

3 Okay.

4 Q Have you seen this email before?

5 A No.

6 Q Do you see on the first page the email
7 from Danielle Cutrona, Wendy Teramoto dated
8 September 17, 2017 at 12:10 p.m.?

9 A Yes.

10 Q Do you know who Danielle Cutrona is?

11 A I don't.

12 Q Do you know what OAG stands for?

13 A Office of the Attorney General.

14 Q Okay. So is your understanding that
15 Danielle Cutrona, as of September 17, 2017, worked
16 in the Office of Attorney General?

17 MR. GARDNER: Objection. Lack of
18 foundation.

19 THE WITNESS: Again, based on the email,
20 that would appear to be the case.

21 BY MR. COLANGELO:

22 Q Okay. And Ms. Cutrona says to

1 Ms. Teramoto, quote, from what John told me, it
2 sounds like we can do whatever you-all need us to
3 do, and the delay was due to a miscommunication.

4 Do you see that?

5 A I see that.

6 Q And then Ms. Teramoto writes back, "They
7 connected. Thanks for the help. Wendy."

8 Do you see that?

9 A I see that.

10 Q And you mentioned that you got an update
11 after this call. Who did you get that update
12 from?

13 A I said I think the Secretary mentioned
14 they had a discussion and the Attorney General was
15 looking into it.

16 Q Well, this email doesn't say the Attorney
17 General was looking into it. It says, "We can do
18 whatever you-all need us to do and the delay was
19 due to a miscommunication. The AG is eager to
20 assist."

21 A That is what the email says. That is not
22 what was communicated to me, so --

1 Q So the Secretary said to you the AG will
2 look into it?

3 A I don't recall the exact words, but the
4 AG is looking into the matter.

5 Q When did the Secretary describe to you
6 the conversation with the Attorney General?

7 A I have no idea. Some time in this time
8 frame.

9 Q And what did he say when conveying the
10 substance of the call to you?

11 A I already relayed that. He said
12 something to the effect of the AG is working on
13 it.

14 Q Okay. So this was in September of 2017.
15 At some subsequent point, did the acting director
16 of the Census Bureau receive a memo from the
17 Justice Department requesting inclusion of a
18 citizenship question?

19 A Acting director receive a memo? I'm not
20 aware of a memo. I think -- I think there was a
21 letter that was sent.

22 Q Okay. And do you remember the date of

1 that letter?

2 A I don't.

3 Q Have you seen that letter?

4 A I believe I saw a letter from the
5 Justice Department.

6 Q It came in around December of 2017, does
7 that sound right?

8 A That sounds like the right ballpark.

9 Q Did you see that letter before it was
10 transmitted to Mr. Jarmin -- to Dr. Jarmin?
11 Sorry.

12 A I had not, no.

13 Q And did you know the date that that
14 letter was going to be transmitted before it was
15 transmitted?

16 A I did not, no.

17 Q And did you read the letter when it came
18 in?

19 A I imagine I did.

20 Q And did you discuss that letter with the
21 Secretary when it came in?

22 A I -- I might well have. I don't know.

1 Q Okay. What did you say to the Secretary
2 about the December 2017 letter when it came in?

3 A Justice Department has requested this, so
4 now we can start the formal process.

5 Q And what formal process are you referring
6 to?

7 A Well, as I've outlined before, in order
8 for the government to take an action, you have to,
9 basically, create a record and make your decision
10 on the basis of that record. So without a request
11 from an agency to ask for the inclusion of
12 citizenship, you were -- this was, basically, a
13 hypothetical question.

14 Q Okay. But you had told the Secretary in
15 May, we will get the Justice Department to request
16 the question?

17 A I am going to do everything I can to
18 carry out the Secretary's wishes, if they are
19 legal, and so I will do my best. I can't promise
20 things.

21 Q You mentioned in reference to your
22 May 2nd email that you'd identified a case or

1 cases supporting the --

2 A Right.

3 Q -- need for a citizenship question?

4 A Correct.

5 Q Is that case the Evanwell decision?

6 A I have no idea.

7 MR. COLANGELO: Give me one second,
8 Counsel.

9 MR. GARDNER: Sure.

10 MR. COLANGELO: I think I'm done, so we
11 will hand over to other counsel.

12 Do you want a short break, David, to do
13 that?

14 MR. GERSCH: I could do some questioning
15 before we break and then we can break.

16 MR. COLANGELO: Sure.

17 Let's go off the record.

18 VIDEOGRAPHER: Going off the record. The
19 time on the video is 1:49 p.m.

20 (Off the record.)

21 VIDEOGRAPHER: We're back on the record.
22 The time on the video is 1:50 p.m.

1 EXAMINATION BY MR. GERSCH:

2 Q Good afternoon, Mr. Comstock. My name is
3 David Gersch, and I represent the New York
4 Immigration Coalition plaintiffs.

5 A Okay.

6 Q And I'm going to ask you some questions.

7 A Sounds fine.

8 Q All right. At some point in March, the
9 Secretary -- and when I secretary, you'll
10 understand I mean Secretary Ross?

11 A Yes.

12 Q At some point in March, the Secretary
13 issues what's called a decisional memorandum
14 explaining his decision to add a question
15 regarding citizenship to the census?

16 A You're referring to March 2018?

17 Q I'm sorry?

18 A You're referring to March 2018, not 2017?

19 Q I'm referring to March 26th.

20 A Right. In the year 2018 --

21 Q Correct.

22 A -- not the year 2017.

1 Q Ah. If I said --

2 A The prior questions were very focused on
3 March 2017, so I want to be clear we're now
4 talking about the following year.

5 Q Absolutely. Sorry. Yes. These
6 questions -- the question I'm going to ask you now
7 is about 2018.

8 You recall there was a time,
9 March 26, 2018, when the Secretary issued a
10 decisional memorandum regarding his decision to
11 add a citizenship question?

12 A Yes.

13 Q You worked on that memorandum?

14 A Yes.

15 Q Okay. Were you the principal drafter?

16 A I was one of the principal drafters.

17 Q Who were the other principal drafters?

18 A James Uthmeier was the primary other
19 drafter.

20 Q Did you have a division of responsibility
21 between the two of you?

22 A No. I believe he did the first draft.

1 Q He did the first draft?

2 A Well, the Secretary actually probably
3 made -- indicated what he wanted in a draft and
4 then James would have put it together.

5 Q And then you would have worked on it
6 after James?

7 A Correct.

8 Q All right. Was that a typical way in
9 which the two of you worked?

10 A Sure. I edit lots of documents.

11 Q I mean --

12 (Thereupon, the court reporter
13 clarified.)

14 THE WITNESS: I edit lot of documents.

15 BY MR. COLANGELO:

16 Q I meant with you and Mr. Uthmeier?

17 A Yeah. It would be unusual for me to
18 prepare the first draft and him to edit it, yes.

19 Q That's what I'm getting at. All right.
20 Thank you.

21 And did anyone else work on the draft
22 besides you, the Secretary and Mr. Uthmeier?

1 A Yes. I think numerous other people
2 reviewed the draft, and --

3 Q How about people who contributed to the
4 language?

5 A Again, without seeing various drafts, it
6 would be hard to say who contributed to which
7 language.

8 Q Okay. Okay. Couple more questions
9 before we take our break.

10 You were shown earlier today a supplement
11 to the decisional memorandum --

12 A Yes.

13 Q -- issued by Secretary Ross in June of
14 this year.

15 You recall that?

16 A Right. You're referring to Exhibit 5?

17 Q Yes. And there's language in
18 Exhibit 5 -- get the exact language -- there's
19 language in Exhibit 5 that says referring to
20 fundamental issues regarding the upcoming 2020
21 census, "part of these considerations included
22 whether to reinstate a citizenship question which

1 other senior administration officials had
2 previously raised."

3 Was that language in the original memo
4 you received -- original versions of this memo you
5 received from the Department of Justice?

6 A I have no idea.

7 Q Did you add that language?

8 A No.

9 Q Do you have any idea who put that
10 language in there?

11 A I don't.

12 Q Who at the Department of Justice
13 recommended that the Secretary sign this memo
14 memorandum?

15 A I don't know exactly. I mean, I was
16 told --

17 Q Who were you dealing with at the
18 Department of Justice?

19 A Well, I wasn't dealing directly with
20 them. It was the Office of General Counsel at
21 Department of Commerce that was dealing with them.

22 Q All right. If I understood your

1 testimony this morning -- and correct me if I'm
2 wrong -- you received a draft from
3 Department of Justice and you made edits to it; is
4 that right?

5 A Well, Department of Commerce received the
6 draft, which I made some edits to.

7 Q Who did you receive the document from?

8 A I would have either gotten it from James
9 Uthmeier or Mike Walsh.

10 Q And is it your testimony you don't know
11 who at Department of Justice were -- well,
12 withdrawn.

13 You made recommendation to the Secretary
14 that he sign the memorandum, correct?

15 A Based on the advice I'd been given by the
16 Office of General Counsel, yes.

17 Q This morning I understood you to testify
18 that it was based on the advice from the
19 Department of Justice. Do --

20 MR. GARDNER: Objection.

21 BY MR. GERSCH:

22 Q -- you recall that testimony?

1 MR. GARDNER: Objection.
2 Mischaracterizes the witness's previous testimony.

3 THE WITNESS: My previous testimony was
4 the Department of Justice sent to the
5 Department of Commerce, from the Justice
6 Department to the Office of General Counsel, a
7 draft document suggesting that the Secretary
8 needed to sign this. That document was reviewed
9 by the Office of General Counsel and myself, edits
10 were made, the document produced, and the
11 Secretary then signed it.

12 BY MR. GERSCH:

13 Q Yeah. My question was a little
14 different.

15 My understanding of your testimony this
16 morning was you recommended that the Secretary
17 sign this supplemental memorandum based on advice
18 you received from the Department of Justice; is
19 that correct?

20 MR. GARDNER: Objection.
21 Mischaracterizes the witness's previous testimony.

22 THE WITNESS: Once again, the

1 Department of Justice, who are our counsel,
2 suggested that a supplemental memorandum was
3 needed. This was not something Department of
4 Commerce generated. This was something the
5 Department of Justice, as our counsel, recommended
6 be provided. Following up on that advice, we
7 worked on the document and then had the Secretary
8 sign it. We were following advice of counsel.

9 BY MR. GERSCH:

10 Q Well, again, I'm not sure I've got an
11 answer to my question.

12 My understanding -- well, I'll put it --
13 without respect to what you testified to this
14 morning, is it correct that you advised the
15 Secretary to sign the supplemental memorandum
16 based, in part, on advice from the
17 Department of Justice?

18 A Again, I'm not sure I'm following the
19 logic of your question. But, once again, this
20 document was produced initially by the
21 Department of Justice, who sent it to the
22 Department of Commerce with the recommendation

1 that the Secretary, for purposes of this
2 litigation, needed to submit this supplemental
3 memorandum.

4 So we reviewed it, made a few edits, and
5 then we had the Secretary sign it. We were
6 following the advice of our counsel. I'm not sure
7 which part of that answer you're not following.

8 Q I just asked whether part of the basis
9 for your advice to the Secretary to sign it was
10 the advice you got from the Department of Justice?

11 A Obviously.

12 Q Thank you.

13 Did you talk to the Department of Justice
14 about why it was a good idea for the Secretary to
15 sign this memorandum?

16 A No.

17 Q Did anyone?

18 A You'd have to ask our Office of General
19 Counsel.

20 Q And it's your testimony that you had no
21 dealings with the Department of Justice about this
22 memorandum?

1 A That's correct.

2 Q Okay.

3 MR. GERSCH: Let's take our short break
4 here.

5 MR. GARDNER: How long?

6 MR. GERSCH: Ten minutes or so.

7 VIDEOGRAPHER: This is the end of Media
8 Unit Number 4. The time on the video is 1:58 p.m.
9 We are off the record.

10 (Off the record.)

11 VIDEOGRAPHER: This begins Media Unit 4.
12 The time on the video is 2:14 p.m. We are on the
13 record.

14 BY MR. GERSCH:

15 Q Mr. Comstock, we're back on the record.
16 Before the break, I was asking some questions
17 about 2018. Now I want to go back to 2017.

18 A Okay.

19 Q You with me?

20 A I'm with you.

21 Q All right. I want to go back to the
22 spring of 2017 when Secretary Ross requests the

1 inclusion of a citizenship question on the census.
2 At that point in time, the Department of Justice
3 had made no request to Commerce for the addition
4 of a citizenship question, correct?

5 A That's correct.

6 Q And they certainly hadn't
7 asked -- withdrawn.

8 The Department of Justice certainly
9 hadn't asked Commerce to add a citizenship
10 question because of the VRA. That's also correct;
11 isn't it?

12 A Well, they didn't ask us to add a
13 citizenship question at that point. So
14 speculating as to why they would ask is
15 irrelevant.

16 Q I'm not asking you to speculate. The one
17 thing we can be sure of is they didn't ask about
18 the VRA is because they didn't ask at all?

19 A Correct.

20 Q All right. And when Secretary Ross says
21 to you in the spring, in whatever words he used,
22 that he wants a citizenship question added to the

1 census, wouldn't you have had a discussion with
2 him at the time about why he wants that?

3 MR. GARDNER: Objection. Asked and
4 answered.

5 THE WITNESS: Again, the answer is no, I
6 would not have a discussion. My boss, if he asked
7 me to investigate something, I investigate it and
8 report back the results.

9 BY MR. GERSCH:

10 Q Is your testimony you did not have a
11 discussion?

12 A I did not.

13 Q And you're not saying -- well, withdrawn.
14 Wouldn't it be helpful to you in your job
15 to assist the Secretary to have an understanding
16 of why he wanted the citizenship question?

17 MR. GARDNER: Objection. Form.

18 BY MR. GERSCH:

19 Q You can answer.

20 A Again, I didn't have any particular
21 doubts about why a citizenship question would be
22 useful, so, no, it would not have hurt me to ask.

1 Q I'm not asking whether you had doubts.
2 My question to you is a little bit --

3 A I understand your question.

4 Q My question, sir, is: Wouldn't it be
5 helpful to you in your job of assisting the
6 Secretary to have a complete understanding of why
7 the Secretary wants to add a citizenship question?

8 MR. GARDNER: Objection. Form.

9 THE WITNESS: Again, it's not relevant to
10 the question of whether or not he needs -- of
11 whether or not a question should be added, so, no.

12 BY MR. GERSCH:

13 Q Is it your testimony that why he wants a
14 citizenship question to be added is not relevant
15 to whether it should be added? Did I -- did I
16 hear that right?

17 MR. GARDNER: Objection.
18 Mischaracterizes the witness's prior testimony.

19 THE WITNESS: My test- --

20 MR. COLANGELO: That's exactly what he
21 said, Counsel.

22 THE WITNESS: No. My testimony is: The

1 rationale for why he would want it added is not
2 relevant to my initial inquiry as to whether or
3 not a question can be added.

4 BY MR. GERSCH:

5 Q Yeah. My question was a little
6 different. The question I am trying to get you to
7 focus on is: In your work for the Secretary,
8 wouldn't it be helpful to you to understand as
9 fully as possible why he thinks it's a good idea
10 to add a citizenship question?

11 A And let --

12 MR. GARDNER: Objection. Asked and
13 answered.

14 THE WITNESS: And let me get you to
15 understand my answer, which is, no, it would not
16 make a difference, because I don't need that
17 information to investigate the question.

18 BY MR. GERSCH:

19 Q Anyone ever say anything to you about why
20 the Secretary thought it was a good
21 idea -- withdrawn.

22 Am I right that your testimony is that

1 you've never had a discussion with the Secretary
2 about why he thought it was a good idea to have a
3 citizenship question added?

4 A That's correct. I have not had a
5 conversation with him, no.

6 Q Okay. And did anyone else say anything
7 to you about why the Secretary thought it was a
8 good idea to have a citizenship question added?

9 MR. GARDNER: Objection. Form.

10 THE WITNESS: Again, no.

11 BY MR. GERSCH:

12 Q All right. If I remember correctly, you
13 testified you worked in a bullpen area?

14 A Correct.

15 Q Outside the Secretary's office?

16 A Yes.

17 Q I'm not sure I've got all the people who
18 were there, but Wendy Teramoto was there, right?

19 A Correct.

20 Q James Uthmeier was there?

21 A No.

22 Q I'm sorry.

1 You were there?

2 A Yes.

3 Q Eric Branstad, was he there?

4 A Yes.

5 Q That's three.

6 Izzy Hernandez, that's four. Was he
7 there?

8 A Yes.

9 Q Who was the fifth?

10 A James Rockas.

11 Q And I'm right that there were five?

12 A Correct.

13 Q Okay.

14 A At times.

15 Q So you're all sitting there -- and are --
16 do you work in cubicles, open desks, how does it
17 work?

18 A Wendy Teramoto had a seated desk. I had
19 a standing desk. Izzy had a standing desk with a
20 stool. James had a standing desk with a stool.
21 Eric Branstad had a standing desk with a stool.

22 Q Are there walls? Are there partitions?

1 Are you all in an open space?

2 A I'm facing -- I was facing Wendy. Izzy,
3 who was rarely there, but his desk was next to
4 mine, facing Eric, and then James was on the end.

5 Q And there are no walls, correct?

6 A No walls.

7 Q No partitions?

8 A No partitions.

9 Q Okay. In all the time that you're
10 sitting there and you're all working together, no
11 one says, why does the Secretary want to add a
12 citizenship question -- citizenship question?

13 A That's correct. Because, again, this was
14 one of well over 100 different items we were
15 working on. All of us were working on different
16 things. I'm primarily tasked with policy. James
17 is primarily tasked with press. And so you're
18 dealing with all of these other issues. There's
19 no reason to discuss it.

20 Q I'm not even talking about discussing it.
21 No one mentioned? Did anyone mention it?

22 A Not that I recall.

1 Q No one says the reason the Secretary
2 wants to add a citizenship question is whatever
3 the reason is, no one ever said anything like
4 that?

5 A No.

6 MR. GARDNER: Objection to form.

7 THE WITNESS: Not to my recollection.

8 BY MR. GERSCH:

9 Q Okay. Did you ever have a discussion
10 with people from the Office of General Counsel at
11 Commerce about why the Secretary wanted to add a
12 citizenship question?

13 A No.

14 Q And in your time there, did you never see
15 a document analyzing why it was a good idea for
16 Census to add a citizenship question?

17 A Again, you're -- we have a fundamental
18 disagreement on the premises of your question.
19 Your premise is that somehow a reason needs to be
20 provided. The question before us is the Secretary
21 has the legal authority to add questions to the
22 census. Is there a governmental need? And if

1 there is, then you're off to the races.

2 Q My question was a little different. My
3 question was --

4 A I understand your question.

5 Q Sir, I'll repeat it for you.

6 My question is: In all the time you're
7 there, did you never see a document spelling out
8 the reasons why it would be a good idea to add a
9 citizenship question? Why it would be good from
10 Commerce's perspective?

11 MR. GARDNER: Objection. Form.

12 THE WITNESS: Again, that's not the
13 question. Commerce --

14 BY MR. GERSCH:

15 Q Excuse me, sir. That is my question.
16 Could you answer my question?

17 A Okay. No.

18 Q Not even a scrap of paper, right?

19 A Nope.

20 Q No memoranda, right?

21 A No.

22 Q No emails?

1 A Not that I recall.

2 Q And I just want to be straight on my
3 understanding. I think I got you correctly, but I
4 just want to make sure and test that I'm right.

5 It couldn't possibly assist you in your
6 work, in any way, to know why the Secretary wanted
7 to add a citizenship question? Do I understand
8 that correctly?

9 A It's not relevant to my analysis.

10 Q And so it couldn't possibly help you in
11 any way in your work?

12 A I'm not going to agree with your
13 statement that way, no.

14 Q Well, that's my question -- withdrawn.

15 Well, is there any way in which knowing
16 what the Secretary's reason was for wanting to add
17 a citizenship question, is there any way that
18 could assist you in your work at
19 Department of Commerce?

20 A Assist me on my work at the Department of
21 Commerce, no.

22 Q Is there any way that it could help you

1 help the Secretary add a citizenship question?

2 A If I had found it difficult or
3 challenging, yes. Knowing more about why he
4 wanted it would have been helpful, but I didn't
5 say that there was an issue. It had been asked
6 for hundreds of years, and it had been asked on
7 the ACS. So, clearly, there's a need for it. And
8 so, no, that was not a particularly troublesome
9 aspect of the question I was being asked to look
10 into.

11 Q When you said if I had found it difficult
12 or challenging, what did you mean? What's the it?

13 A If -- if what I had been requested to do
14 seemed to have significant legal obstacles to the
15 ability to do that question or take that action,
16 then I would probably inquire more fully to see if
17 there's an alternative way to address what the
18 Secretary is trying to get to. In this particular
19 case, you have something that has been on the
20 decennial census before that is currently being
21 asked on the ACS. There's clear legal authority
22 for him to add the question. So, frankly, the

1 reasons that he wants to add it doesn't add
2 anything to the analysis. There is a governmental
3 need for this information. That's a question
4 that's already established, so I don't need to
5 inquire further as to what his personal beliefs
6 regarding this question might be.

7 Q What's the governmental need for the
8 question?

9 A Enforcement to the Voting Rights Act,
10 determining how many undocumented citizens there
11 are. You name it, there's a whole bunch of
12 reasons. That's why every government in the world
13 collects this information.

14 Q Well, correct me if I'm wrong, we're
15 talking about at a period in the spring of 2017
16 when the Voting Rights Act hadn't come up, the
17 Department of Justice hadn't made a request for
18 it. What does the Voting Rights Act got to do
19 with it in the spring of 2017?

20 A When you inquire as to what does the
21 Department of Justice use the citizenship data
22 on --

1 Q That wasn't my question. My question
2 is --

3 A I'm answering your --

4 Q -- why is it a good idea, why does the
5 government need it back in the spring of 2017?

6 A Finished with your question?

7 Q That's my question.

8 A The answer is for the same reason they've
9 been collecting it for the last 200-plus years.

10 Q What's the government need in the spring
11 of 2017?

12 A I already answered that question. If
13 they collect the data under the ACS for Voting
14 Rights Act enforcement, that is one of the primary
15 reasons they collect the data.

16 Q Okay. It's on the ACS. What's the
17 need -- governmental need for it to be on the
18 census?

19 MR. GARDNER: Objection. Asked and
20 answered.

21 THE WITNESS: The governmental need is,
22 again, if you're going to get more detailed

1 information, then you need that information.

2 BY MR. GERSCH:

3 Q Who said in the spring of 2017 that the
4 government needed more detailed information?

5 A Again, I'm presented with a request by
6 the Secretary to say, can we add this question to
7 the census? I inquire about that, and I looked at
8 it. One of the reasons you would need it is
9 voting rights. If you're going to do voting
10 allocations on the basis of census allocations,
11 that's the reason it's perfectly sufficient.

12 Q Who said that in the spring of 2017?

13 A That was -- that was determined after
14 taking a quick look at the issue. I don't need
15 more than that to continue to pursue the question.

16 Q Who told you that the government needed,
17 in the spring of 2017, more detailed information
18 about citizenship than was contained in the ACS?

19 A Nobody.

20 Q You came to that decision on your own; is
21 that right?

22 A Correct.

1 Q But you're not a voting rights lawyer,
2 right?

3 A Irrelevant to the question.

4 Q That's not my question. You're not a
5 voting rights lawyer, right?

6 A I've already said that.

7 Q So you decided on your own in the spring
8 of 2017 that it would be a good idea for the
9 government to have more information than was
10 available from the ACS about citizenship to
11 enforce the Voting Rights Act, even though you're
12 not a voting rights lawyer?

13 A I don't agree with that characterization,
14 at all. I decided that there was sufficient
15 information for me to pursue the Secretary's
16 request to consider placing a citizenship question
17 on the decennial census and that there was
18 sufficient potential reason to collect that
19 information to warrant moving forward. If I'd
20 come to an opposite conclusion that there was not
21 sufficient potential reason or that there was some
22 insurmountable legal bar, then I would have

1 reported back to the Secretary, I'm sorry,
2 Mr. Secretary, it does not appear we can
3 accomplish this objective.

4 Q Why did you need to come up with a reason
5 for asking the question, separate and apart from
6 whatever reason the Secretary had in his own head?

7 A Again, my job is to figure out how to
8 carry out what my boss asks me to do. So you go
9 forward and you find a legal rationale. Doesn't
10 matter what his particular personal perspective is
11 on it. It's not -- it's not going to be the basis
12 on which a decision is made.

13 Q That's your understanding, that the way
14 you should do it, is come up with a rationale that
15 has nothing to do with what's in the Secretary's
16 mind as to why he wants it; is that your
17 understanding of how it's supposed to work?

18 A No. Again, you continue to characterize
19 things in a way that you believe may be correct,
20 but not the way I believe to be correct. My job,
21 as a person who has been doing this for 30-plus
22 years for clients and people in the government, is

1 if they would like to accomplish an objective, I
2 see if there's a way to do that. And, again, if
3 it's not legal, you tell them that. If it can't
4 be done, you tell them that. If there's a way to
5 do it, then you help them find the best rationale
6 to do it. That's what a policy person does.

7 And so, again, if I came up with a
8 rationale that the Secretary didn't agree with or
9 didn't support, then he was going to tell me that.
10 I have no doubt about that. But in the meantime,
11 he doesn't -- I don't need to know what his
12 rationale might be, because it may or may not be
13 one that is -- that is something that's going to a
14 legally-valid basis.

15 So, again, he's got -- he's asked, can we
16 put -- can we put a question on? The job of a
17 policy person is go out and find out how you do
18 that. Whether that decision is going to be made
19 ultimately to do it or not, that's up to the
20 decision-maker.

21 Q Are you saying you're better off not
22 knowing what the Secretary's own rationale is for

1 wanting the citizenship question?

2 A The Secretary, as you would point out, is
3 not a voting rights lawyer, so I would not expect
4 him to necessarily come up with a rationale.
5 That's the job of the staff at work.

6 Q You certainly wouldn't expect the
7 Secretary to have come up with the idea that the
8 reason he should want the citizenship question is
9 the Voting Rights Act; you wouldn't expect him to
10 come up that on his own?

11 A I -- he might well. I don't know.

12 Q You have no reason to believe that he
13 did, right?

14 MR. GARDNER: Objection. Calls for
15 speculation.

16 THE WITNESS: I'm not going to speculate
17 about what his rationale was. You'd have to --

18 BY MR. GERSCH:

19 Q Because --

20 A -- ask him.

21 Q -- because you have no idea what his
22 rationale is?

1 A That's correct.

2 Q Counsel asked you about contact you made
3 with the Department of Justice --

4 A Correct.

5 Q -- starting with a Ms. Haney [sic], I
6 believe.

7 Do you recall that?

8 A Yes. I believe her name is Hankey,
9 but --

10 Q Hankey. I apologize.

11 What was the full name? I can get it out
12 if you don't know it offhand.

13 A Mary Blanche, but --

14 Q I'll find it in here.

15 A It's in one of these exhibits, the memo
16 that I wrote. Here.

17 Q Mary Blanche --

18 A Yep.

19 Q -- Hankey; is that right?

20 A Yeah.

21 Q All right. So you went -- you called
22 Mary Blanche Hankey --

1 A Correct.

2 Q -- with regard to adding a citizenship
3 question to the census, right?

4 A Correct.

5 Q And you wanted to see if the
6 Department of Justice would sponsor the question?

7 A Correct.

8 Q And you had a phone call with her, and
9 you had at least a meeting with her, right?

10 A Right.

11 Q So at least two contacts?

12 A Three, when she called me back with
13 somebody else's name.

14 Q Fair enough.

15 Didn't -- didn't Ms. Hankey say, why do
16 you want to have a citizenship question?

17 A No, she didn't.

18 Q Didn't come up, at all?

19 A Nope.

20 Q She referred you to a Mr. McHenry; is
21 that right?

22 A Correct.

1 Q And he's not a voting rights guy, right?

2 A I don't actually know what his background
3 is.

4 Q Well, you went ahead, back and forth with
5 him over about a month; is that right?

6 A I mean, we spoke on the phone probably
7 three or four times, yeah.

8 Q Going from, I think, the period you
9 mentioned was --

10 A Yeah. It was --

11 Q -- early May to early June, roughly?

12 A Approximately a month, yeah.

13 Q And didn't you learn in that time that
14 he's not a voting rights guy?

15 A No.

16 Q Never came up?

17 A We didn't get into great detail on the
18 rationale.

19 Q You did ask him would you sponsor a
20 census question for -- I'm sorry. Withdrawn.

21 You did ask Mr. McHenry if he would be
22 willing to sponsor a request for the addition of a

1 citizenship question on the census, right?

2 A I didn't ask Mr. McHenry if he would. I
3 asked if the Department of Justice would be
4 inclined to send a letter asking us to add the
5 citizenship question.

6 Q Fair enough.

7 And when you did that, you didn't explain
8 to Mr. McHenry why the Secretary wanted a
9 citizenship question?

10 A I would have no reason to.

11 Q And Mr. McHenry never asked, hey, you
12 want me to do this? Why do you need it? He never
13 asked you that?

14 A I think I explained at the outset that
15 the department currently got a report from the ACS
16 on citizenship level -- I mean, on
17 census -- certain census size, Citizen Voting Age
18 Population, and if they were to get it from the
19 decennial, that would allow them a greater
20 granularity and would that be useful to them, and
21 he said he would inquire.

22 Q You asked Mr. McHenry if the

1 Department of Justice would find it useful to have
2 more granularity about citizenship?

3 A Correct.

4 Q But at no point did Mr. McHenry say,
5 look, if we want it, we'll ask for it, but how
6 come you want it? Didn't he ask you something
7 like that?

8 A No.

9 Q When people call you and say, hey, will
10 the Department of Commerce do this or do that,
11 don't you say, why do you want that, why do you
12 need that?

13 A I usually say is there a reason that you
14 think the Department of Commerce would need
15 that -- and if they have a reason, then I'll look
16 into it. I don't say, hey, why does your boss
17 want this? That's not part of lexicon.

18 Q No. No. If another agency calls and
19 says --

20 A I don't --

21 Q Let me finish the question and you can
22 answer any way you want.

1 If another agency calls and says, will
2 the Department of Commerce do such and such,
3 whatever it is --

4 A Right.

5 Q -- don't you say to them in some form or
6 another, why do you want this?

7 MR. GARDNER: Objection. Hypothetical.

8 BY MR. GERSCH:

9 Q Why does your agency need this?

10 MR. GARDNER: Objection. Hypothetical.

11 THE WITNESS: Again, I don't question why
12 their boss might want it. I might say, what is it
13 you think we can provide or why do you think the
14 Department of Commerce is the right agency for
15 this? But if they say we need this data because
16 we're negotiating a trade agreement, whatever,
17 that's fine. I don't question their basis.

18 BY MR. GERSCH:

19 Q Okay. But if I understood your last
20 answer, you added something important, you said,
21 if they call and say we need this for the trade
22 ag- -- trade agreement, you say I don't question

1 them. But if they don't give a reason, sir, don't
2 you say to them, why do you want it?

3 MR. GARDNER: Objection. Calls for a
4 hypothetical.

5 THE WITNESS: Again, I already provided
6 the reason for Department of Justice. I said,
7 would it be useful for you to have more granular
8 voting data at the census lock level? He said he
9 would inquire. That answers your question. I'd
10 already provided the answer.

11 BY MR. GERSCH:

12 Q Mr. McHenry comes back at some point and
13 he says he's not interested, right, in words or
14 substance?

15 A He suggested that I contact the
16 Department of Homeland Security.

17 Q But I take it he makes it clear to you in
18 some fashion -- withdrawn.

19 Let's start with this. What did he say
20 to you?

21 A He suggested I talk to the Department of
22 Homeland Security.

1 Q Did he also say, listen, I don't really
2 need that information, or my guys don't need that
3 information, or my department doesn't need that
4 information or something like that?

5 MR. GARDNER: Objection to form.

6 THE WITNESS: Again, no, he did not
7 indicate that they did not need the information.
8 He simply suggested that they were rather busy and
9 why don't I talk to the Department of
10 Homeland Security.

11 BY MR. GERSCH:

12 Q It's your testimony that he said they
13 were too busy to do it?

14 A Unfortunately, that's not an uncommon
15 response from other agencies. They don't
16 necessarily look for extra work.

17 Q Okay. So they were too busy to ask for
18 it, that's what you understood them to say?

19 A Yeah. Their inclination was they weren't
20 inclined to do the work, to ask for it, yeah.

21 Q Okay. Okay. So Mr. McHenry let's you
22 know he's not inclined or the department is not

1 inclined to do the work, to ask for it, and he
2 refers you to Homeland Security, correct?

3 A Correct.

4 Q And you speak to a Mr. Hamilton, right?

5 A Right.

6 Q And Mr. Hamilton, he's not a VRA guy,
7 right?

8 A I have no idea what his background is.

9 Q Certainly, it's your understanding that
10 the Department of Homeland Security has nothing to
11 do with enforcing the Voting Rights Act?

12 A It would not normally be something I
13 would think they would do, no.

14 Q And you talked to Mr. Hamilton how many
15 times?

16 A I don't know, three or four times.

17 Q Over what period?

18 A Again, two weeks. I don't know.

19 Q And don't you say to Mr. Hamilton, here's
20 why we want the information, here's why we want
21 you to ask for the citizenship question?

22 A Again, it was the same explanation as I

1 gave the Department of Justice. And as you
2 pointed out, DHS doesn't really do that. So I was
3 simply following up on the suggestion that
4 Mr. McHenry had made, and perhaps there was
5 something that DHS did that I was unaware of that
6 would have them -- have the need for this
7 information. Turns out they didn't, so back to
8 Square 1.

9 Q Yeah. My question is -- and maybe I
10 didn't phrase it exactly right.

11 Did you explain to Mr. McHenry [sic] in
12 any of these several calls, here's why it's
13 important to the Department of Commerce, or your
14 boss or whomever, here's why it's important
15 that -- to get a citizenship question added?

16 MR. GARDNER: I think you mean
17 Mr. Hamilton. You said Mr. McHenry.

18 MR. GERSCH: Withdrawn. Let me rephrase.
19 Thank you, Counsel.

20 BY MR. GERSCH:

21 Q In any of these several calls, you say to
22 Mr. Hamilton, here's why it's important to

1 Department of Commerce to have you folks request
2 the addition of a citizenship question.

3 A No. I never explained that to him.

4 Q And is it your testimony that in your
5 several conversations with Mr. Hamilton, he never
6 says, hey, why do you want this?

7 A That's correct.

8 Q He never says, why do you want a
9 citizenship question added?

10 A Again, when somebody calls up and says --
11 my boss, you know, Secretary Ross, AG Sessions,
12 whomever has asked us to pursue this, I don't
13 typically question back and say, well, why do you
14 think -- does your boss think this is needed? I
15 just don't do that. It's kind of discourteous to
16 other staff. So no, he took me at face value.
17 I'm calling to inquire, would they find this
18 useful? He gets back to me, no.

19 Q I just want to make sure I caught part of
20 what you're saying correctly.

21 Are you saying it would have been
22 discourteous for Mr. Hamilton at Homeland Security

1 to say, hey, why do you guys at Commerce want us
2 to ask for a citizenship question?

3 A For him to challenge why my boss might
4 ask for it.

5 Q I didn't say challenge.

6 Is it your testimony it would be
7 discourteous for him to say, hey, you're asking me
8 to do something --

9 A Uh-huh.

10 Q -- something which involves some work --

11 A Uh-huh.

12 Q -- would you just explain to me why it's
13 important for you to have me ask for a citizenship
14 question?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No such conversation
17 occurred.

18 BY MR. GERSCH:

19 Q Yeah. My question is: Would that have
20 been discourteous for him to say that to you?

21 A Depends on how he phrased it.

22 Q He could have phrased it in a way that

1 was properly respectful, right?

2 A Theoretically, yes.

3 Q In the time that you were dealing with
4 Mr. McHenry or getting ready to deal with
5 Mr. McHenry -- this is back at the Justice
6 Department now -- did you ever learn that he was
7 director of the Executive Office of Immigration
8 Review?

9 A I never learned that, no.

10 Q How about Ms. Hankey, did she say why she
11 was going to refer you to Mr. McHenry?

12 A No, she didn't.

13 Q Is it common for you to call people like
14 Mr. McHenry without knowing what their position
15 is?

16 A Certainly at that time, yes.

17 Q What was it about that time?

18 A Well, it was shortly into the
19 administration, and titles are not necessarily
20 informative of what people do, so --

21 Q Did you have an understanding of what
22 Mr. McHenry's portfolio was, independent of his

1 title?

2 A No.

3 Q About what his expertise was independent
4 of his title?

5 A No.

6 Q You didn't know -- withdrawn.

7 You're trying to accomplish something for
8 your boss, right?

9 A Correct.

10 Q And you're calling another agency and
11 you're going to ask them to do some work, right?

12 A Right.

13 Q And you know from your vast experience
14 that sometimes people just say no because they
15 just don't want to do the work, right?

16 A Correct.

17 Q That's not uncommon, right?

18 A It's been my experience.

19 Q So in order to have the best possible
20 chance of persuading a person like Mr. McHenry,
21 don't you want to do a little research beforehand?

22 A Again, I was dealing with, literally,

1 hundreds of issue, as well as clearing
2 correspondence, clearing Federal Register notices,
3 no. I did not have time to research this guy's
4 background. That's why I went through
5 Eric Branstad to say, hey, get me somebody over at
6 DOJ who I can talk to. I want to Hankey -- and I
7 don't know her from Adam, but relying on the fact
8 that she was recommended by folks over at the
9 White House as somebody who was connected with
10 AG Sessions, I'm assuming she's going to steer me
11 in the right direction. So I take on faith who
12 she suggested I talked to. Turned out they
13 weren't the right person, so we didn't get
14 anywhere.

15 Q Did you have an assistant during this
16 period?

17 A No.

18 Q Any staff?

19 A I had my OPSP staff.

20 Q Who's that?

21 A Office of Policy and Strategic Planning.
22 They were the detailees I discussed earlier.

1 Q Got it.

2 You couldn't ask one of them, hey, I'm
3 supposed to have a call with Mr. McHenry, can one
4 of you figure out what he is and why --

5 A No.

6 Q Excuse me. I got to -- just a second.
7 I've got to finish the question. You can answer
8 it any way you want.

9 Didn't you want to call -- talk to one of
10 your staff people and say, listen, I got a call
11 with Mr. McHenry, I got to persuade him to do some
12 work he's not going to want to do, to help out our
13 boss, Mr. Ross, Secretary Ross, and can one of
14 your look up and tell me who he is and what levers
15 we might be able to pull to persuade him to do
16 this work for us?

17 MR. GARDNER: Objection.

18 BY MR. GERSCH:

19 Q You didn't want to ask someone on your
20 staff to do some work like that for you?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: Again, that's a view of

1 both the workload I was under and the workload
2 that they're under that I think is misinformed.

3 In fact, several of my calls with
4 Mr. McHenry were made while I was driving into
5 work, so there was no opportunity to call somebody
6 and do that research.

7 And, besides, this wasn't about getting
8 leverage on Mr. McHenry. This was simply to
9 ask -- following up on the person I'd been
10 directed to, who, based on the fact that it was
11 recommended by an assistant to the AG, I'm
12 assuming is going to at least be somewhat
13 receptive. Probably an error on my part, but
14 that's -- I've got a dozen other things I'm
15 dealing with at the same time. So, no, I'm not
16 going to spend a lot of time researching this guy.

17 BY MR. GERSCH:

18 Q You didn't spend any time researching
19 this guy?

20 A Correct. I didn't.

21 Q Secretary Ross certainly knows why he
22 wanted a citizenship question back in the spring

1 of 2017, right?

2 A You'd have to ask him.

3 Q Is there anyone besides Secretary Ross
4 who we could go to who would have that
5 information?

6 MR. GARDNER: Objection. Lack of
7 foundation. Calls for speculation.

8 THE WITNESS: I'm not aware of anybody.

9 BY MR. GERSCH:

10 Q Do you have any reason to believe that
11 Secretary Ross's rationale for wanting to add a
12 citizenship question is some kind of supersecret?

13 A No.

14 Q Doesn't involve national security, right?

15 MR. GARDNER: Objection. Lack of
16 foundation. Calls for speculation.

17 THE WITNESS: I don't know what the
18 Secretary's rationale is. You'd have to ask him.

19 BY MR. GERSCH:

20 Q But you don't think it involves national
21 security?

22 MR. GARDNER: Same objections.

1 THE WITNESS: I'm not going to speculate
2 on that.

3 BY MR. GERSCH:

4 Q You heard about this suit back when it
5 was filed, right, this lawsuit?

6 A Yeah.

7 Q Okay. And there's several lawsuits,
8 right?

9 A Lost count, but yes.

10 Q And you've known that you were going to
11 sit for a deposition for a while, also?

12 A Maybe for two weeks or so.

13 Q Okay. Well, at any time since these
14 lawsuits started to get filed, did you have a
15 discussion with anyone about why it is the
16 Secretary wanted a citizenship question added?

17 A No.

18 Q Secretary Ross gave Congressional
19 testimony in March of 2018 in advance of his
20 decisional memorandum. Do you remember that?

21 A I'll take your word for it.

22 Q Testified before committees of both --

1 both House, right?

2 A Again, I'd have to look at a calendar to
3 refresh my memory as to when he testified. But,
4 yes, he testified to Congress during the course of
5 the year.

6 Q Fair enough.

7 And he was asked questions about a
8 citizenship question?

9 A I believe that's correct.

10 Q Who prepared him to testify on that
11 subject?

12 A He -- he does a lot of his own hearing
13 prep, but we would have -- I would have been
14 involved, as well as James Uthmeier,
15 Peter Davidson, of course, Karen Dunn Kelley. I
16 mean, this was not a hearing specifically on the
17 citizenship question, so we mostly would have been
18 preparing for the broad range of questions on
19 whatever the topic was. We were going up and
20 testifying on the steel tariffs. We were going up
21 and testifying on the lifecycle cost estimate, a
22 whole series of things, so --

1 Q Sure. You want to get him prepped on
2 everything, though, right?

3 A Yeah.

4 Q And one of the things that you
5 anticipated would come up was the question about
6 the citizenship question, right?

7 A Seems reasonable if that was the time
8 frame, yes.

9 Q And were you the one who worked with
10 Secretary Ross on how he was going to answer those
11 questions?

12 A I would have been one of the people, yes.

13 Q Was there a division of responsibility
14 between the folks you mentioned just a minute ago,
15 the people who helped prepare him?

16 A Not per se. I think he's fairly open to
17 suggestions from staff of what to consider. So if
18 somebody had an idea, he would consider it.

19 Q Did you tell the Secretary, listen, you
20 can expect that someone is going to ask
21 whether -- whether you're going to add a
22 citizenship question? Did you have that

1 discussion with him? That would have been normal,
2 right?

3 A Well, again, if this is in the time
4 period after we received the DOJ letter and while
5 he was considering making his decision, then, yes,
6 we might have anticipated. But the answer would
7 have been fairly straightforward, which is we have
8 that matter under review, and I'm considering
9 all -- all information. So there would have been
10 very little we're prepping for on that.

11 Q Didn't you discuss with the
12 Secretary -- withdrawn.

13 First of all, I'll represent that he
14 did -- the Secretary did, in fact, testify before
15 multiple committees after the
16 Department of Justice request came in in December
17 of 2017 and before the issuance of the March
18 decisional memorandum.

19 A Okay.

20 Q And my question to you is: In those
21 discussions that you had with the Secretary to
22 prepare him, wasn't it discussed whether the

1 Secretary was going to reveal the reasons he had
2 wanted to the addition of a citizenship question?

3 A No.

4 Q Subject never came up?

5 A Never came up.

6 Q Didn't it come up whether the Secretary
7 would reveal that the reason that Commerce had
8 received a request from DOJ to add a citizenship
9 question is because Commerce had gone to DOJ and
10 asked DOJ to make that request?

11 A No.

12 Q Never came up?

13 A Never came up.

14 (Conference call interruption.)

15 THE WITNESS: In case we were falling
16 asleep.

17 BY MR. GERSCH:

18 Q You testified with respect to the
19 citizenship question; isn't that right?

20 A That's correct.

21 Q You gave testimony before the House
22 Committee on Oversight and Government Reform?

1 A Correct.

2 Q After the decisional memorandum was
3 issued?

4 A Uh-huh.

5 Q May 8th of this year?

6 A Okay.

7 Q Sound right?

8 A Somewhere in that ballpark, yeah.

9 Q Yeah?

10 A I'll take your word for it on the date.

11 Q You were asked questions by
12 Representative Eleanor Holmes Norton about
13 citizenship questions. Do you remember?

14 A I recall the exchange, yes.

15 Q She asked why did this question, which
16 was dropped for 70 years, suddenly appear on the
17 decennial census, what was the point, didn't she?

18 A I -- I would have to refer to her
19 testimony. I don't have it in front of me.

20 MR. GERSCH: What are we up to?

21 MR. GARDNER: 27.

22 MR. GERSCH: Let's mark this 27.

1 (Plaintiffs' Exhibit 27, Testimony from
2 Committee on Oversight and Government Reform, was
3 marked.)

4 BY MR. GERSCH:

5 Q I'm showing you a transcript of your
6 testimony before the Committee on Oversight and
7 Government Reform on May 2018.

8 Mr. Comstock, I want to be clear. This
9 is not a transcript made by the committee. Do you
10 understand me?

11 A I understand what you're saying.

12 Q Okay.

13 A I'm not sure why it's not a transcript
14 made by the committee, but that's all right.

15 Q We had this transcript --

16 A Okay.

17 Q -- made by a reporter who watched your
18 testimony.

19 A Okay.

20 Q So let me direct you to Page 37, Line 12.
21 See where it says, Ms. Norton?

22 A Uh-huh.

1 Q All right. And this is where she asks
2 you -- withdraw this. Isn't what I want --

3 Let me direct your attention to Lines 2
4 through 5, okay.

5 A All right. Let me read the context of
6 which Lines 2 through 5 appear.

7 Q Let me ask your question and then you can
8 read whatever you need.

9 A All right. Very good.

10 Q On Lines 2 through 5, Ms. Norton asked
11 you, "My question to the two of you" -- and you
12 were there with Mr. Jarmin; is that right?

13 A Correct.

14 Q She says, "My question to the two of you
15 is: Why did this question, which was dropped for
16 70 years, suddenly appear on the decennial census?
17 What was the point?"

18 And then you answered, "Thank you very
19 much, Congresswoman, for the question. We
20 received a request from the Department of Justice
21 for this, and their rationale was that the level
22 of the information that they needed to enforce the

1 Voting Rights Act was not available."

2 That's the testimony you gave, correct?

3 A Again, this is not the official
4 transcript, but presuming your person transcribed
5 this correctly, that appears to be what I said.

6 Q And this squares with your memory of what
7 you said, right?

8 A Correct.

9 Q And when she says, why did this question
10 get added, and you say, we received a request from
11 the Department of Justice, that's not the whole
12 truth; is it?

13 A That's a -- that's a factual statement.

14 Q It's a factual statement that you
15 received a request from Department of Justice,
16 right?

17 A Correct.

18 Q But the reason the Department of Justice
19 made the request is because you guys at the
20 Department of Commerce put them up to it; isn't
21 that right?

22 A I don't agree with that characterization.

1 But, again, the Department of Justice decided that
2 this was information they could use and they made
3 the request. That starts the formal process for
4 us to review the question. Had they decided they
5 did not need that information and not made the
6 request, then the Commerce Department would have
7 had to decide if there was some rationale that the
8 Commerce Department needed this information.

9 Q Sure. But the reason the
10 Department of Justice made this request of the
11 Department of Commerce was that the Department of
12 Commerce went to the Justice Department and said,
13 will you please make this request of us, right?

14 A We asked them if they could use this
15 information. That was an independent decision on
16 their part.

17 Q You asked them if they could use
18 information from a citizenship question, right?

19 A At the block level, which is not
20 currently available.

21 Q And you asked them if they would be
22 willing to request that from the

1 Department of Justice [sic]?

2 A If that was information that they found
3 useful, then they could request it, yes.

4 Q You asked them to request it from the
5 Department of Justice, correct?

6 A Again, what we asked them was if they
7 could use this information, and if so, then they
8 would need to request it.

9 Q Do you deny that you personally went to
10 representatives in the Department of Justice and
11 asked them if they would request the addition of a
12 citizenship question?

13 MR. GARDNER: Objection. Asked and
14 answered.

15 THE WITNESS: To answer, once again, I
16 went to representatives of the
17 Department of Justice and asked them if this would
18 be information that they would find useful, and if
19 so, they could request it.

20 BY MR. GERSCH:

21 Q Yeah. I got that part, and I'm asking a
22 slightly different question now.

1 A Okay.

2 Q Didn't you say to the
3 Department of Justice when you were talking to
4 them, in words or substance, we would appreciate
5 it if you would ask us to include a citizenship
6 question?

7 A I never made such a request.

8 Q And I take it, based on your prior
9 testimony, you don't know what conversation
10 occurred between the Secretary and the Attorney
11 General?

12 A That's correct.

13 Q Did you understand that Ms. Teramoto was
14 on that call between the Secretary and the
15 Attorney General?

16 A I don't know who was on the call.

17 Q In any case, however we word it, you
18 didn't tell Representative Norton when she asked
19 why is this question being added, that you had
20 gone to the Department of Justice and suggested
21 that this might be something they'd be interested
22 in?

1 A That's correct.

2 Q Why is that?

3 A Again, because until the department makes
4 its independent decision to request this
5 information, that was the -- there was no question
6 that was going to be added.

7 Q When Representative Norton says, why is
8 the question being added? Don't you think it's
9 relevant that the Secretary of Commerce wanted
10 this question added independent of the
11 Department of Justice's request?

12 MR. GARDNER: Objection. Form.

13 THE WITNESS: Again, now --

14 MR. GARDNER: What's your -- withdrawn.

15 MR. GERSCH: What's your objection?

16 MR. GARDNER: I didn't understand that
17 question. Is it relevant to Secretary -- or I'm
18 sorry -- Representatives Norton Holmes question
19 that the Secretary had requested DOJ to ask? I
20 didn't even --

21 MR. GERSCH: I got it.

22 BY MR. GERSCH:

1 Q Let me put a different question to you.

2 A Sure.

3 Q When Representative Norton asks you the
4 why question, don't you think it's responsive to
5 the why question that the Secretary of Commerce
6 wanted to add a citizenship question independent
7 of the Department of Justice's request?

8 A No. I don't think it's relevant. His
9 decisional memo laid out very clearly the
10 rationale that was the basis of his decision.
11 Whatever his personal feelings may have been are
12 irrelevant to that decision.

13 Q It laid out a rationale. We can agree on
14 that, right?

15 A That's what he's required to do under the
16 law, is lay out a rationale. That is the
17 rationale for his decision and that's what he's
18 standing on.

19 Q Okay. He laid out a rationale. Is it
20 your understanding, under the law, that if the
21 rationale is not his real reason for doing it, we
22 should ignore the real reason, and we should only

1 focus on the pretextual reasons that he offers up?

2 MR. GARDNER: Objection. Calls for a
3 legal conclusion.

4 THE WITNESS: The Secretary's decision
5 memo lays out a valid reason that's consigned to
6 his discretion under the law, and that is the
7 rationale he provided to staff, and that is the
8 rationale that we placed in the record. So that
9 is his reason for having the question.

10 BY MR. GERSCH:

11 Q My question is a little different. If
12 the Secretary's real rationale is something
13 different than the rationale he lays out in his
14 decisional memo, is it your understanding, under
15 the law, that we're to ignore the real reason and
16 only focus on what's in the decisional memorandum?

17 MR. GARDNER: Objection. Calls for a
18 legal decision.

19 THE WITNESS: Your hypothetical is
20 premised on the false conclusion that there is
21 some illegal rationale that would be provided and
22 be exposed and be referenced. There is none.

1 It's committed to his discretion to add a
2 question, as long as you make it through the other
3 things, Paperwork Production Act, et cetera. So
4 it's -- I don't understand the basis for your
5 question. But there's -- at the base of your
6 question is this hypothetical that there's some
7 supposed illegal reason that would be -- that
8 would nullify a perfectly valid decision. I don't
9 agree with that assessment.

10 BY MR. GERSCH:

11 Q Mr. Comstock, I want you to listen to my
12 question carefully, because there was no reference
13 to any illegal rationale, and I'm going to put it
14 to you again and there will be no reference to an
15 illegal rationale. And my only question -- and,
16 by the way, I'm happy if you want to take this as
17 a hypothetical.

18 My only question is: If the Secretary
19 lays out a rationale in his decisional memorandum
20 which is different than his real rationale, is it
21 your understanding that we're supposed to ignore
22 the real rationale and only focus on what's in the

1 decision memo?

2 MR. GARDNER: Given your introductory
3 clause, objection. Calls for a hypothetical.
4 Objection. Calls for a legal conclusion.

5 THE WITNESS: Again, a decision is valid
6 if a valid reason has been spelled out, and that
7 is what we did.

8 BY MR. GERSCH:

9 Q Could you answer my question?

10 A Again, I don't accept the premise of your
11 question, which is that there's some other reason
12 besides what was provided in the memo.

13 Q It's a hypothetical question, sir. The
14 question is --

15 A I'm not going to answer a hypothetical on
16 that basis.

17 Q I'm asking you to answer it, and you're
18 here to answer questions, and I think I'm fairly
19 following up on your testimony.

20 My question to you is real simple: If
21 the Secretary lays out a rationale in his
22 decisional memorandum and it's not his real

1 rationale, is it your understanding that what
2 we're supposed to focus on is what's in the
3 decisional memorandum and we're not supposed to
4 look at the rationale?

5 MR. GARDNER: Objection. Calls for
6 hypothetical. Objection. Calls for legal
7 conclusion.

8 THE WITNESS: Again, we're at loggerheads
9 here because you keep spelling out something that
10 is -- that presupposes there is some other
11 rationale that would be sufficient to outweigh a
12 legitimate rationale and, therefore, must be
13 noticed and taken care of. I mean, the government
14 makes decisions all the time and spells out a
15 rationale. Do some of decision-makers have,
16 perhaps, other reasons, maybe, but it's not
17 relevant to the legal analysis.

18 Q We shouldn't know what Secretary --
19 withdrawn.

20 We shouldn't know what the real rationale
21 is; is that testimony?

22 A I --

1 MR. GARDNER: Objection. Calls for a
2 legal conclusion.

3 THE WITNESS: Again, I have no reason to
4 believe that the rationale is anything other than
5 what's in the memo.

6 BY MR. GERSCH:

7 Q Well, sir, actually, you testified
8 previously that the Secretary had a rationale for
9 asking this question, which he didn't reveal to
10 you and had nothing to do with the
11 Department of Justice's request.

12 A I disagree with that statement.

13 Q Let's try this one other way. You don't
14 disagree with the proposition that a
15 decision-maker could have a rationale that is
16 different than what he chooses to spell out in his
17 decisional memorandum, right?

18 MR. GARDNER: Objection. Calls for
19 hypothetical.

20 THE WITNESS: Again, I don't know -- I
21 don't -- it's impossible to answer that question,
22 because you -- I'm not sure where you're going

1 with it.

2 BY MR. GERSCH:

3 Q I'm not asking you to know where I'm
4 going with it. I'm asking you to answer the
5 question. I'll put it to you again.

6 You don't disagree with the proposition
7 that it's possible for the decision-maker to have
8 one rationale which he puts in the decisional
9 memorandum and a completely different rationale
10 which is the real reason he wants the decision
11 done?

12 MR. GARDNER: Objection. Calls for a
13 hypothetical.

14 THE WITNESS: Again, in the context we're
15 dealing with, I don't agree with that statement.

16 BY MR. GERSCH:

17 Q It's not possible for that to happen,
18 it's not possible for the decision-maker to put
19 one rationale in the decisional memo and have a
20 completely different rationale for why he wants
21 the decision?

22 MR. GARDNER: Objection. Calls for a

1 hypothetical.

2 THE WITNESS: In my experience with the
3 federal government service across 30 years, both
4 Democrat and Republican, I'm not aware of
5 decision-makers who would do such a thing.

6 BY MR. GERSCH:

7 Q This would never happen, in your view,
8 right?

9 A I'm not going to use the word never.
10 Clearly, in the course of human history, things
11 like that do happen. That's not been my
12 experience that it generally is the case.

13 Q That's fine. Put aside your experience.
14 I'm just asking you conceptually, you don't have
15 difficulty understanding that a decision-maker
16 could say I'm doing this for one reason without
17 revealing that he is actually doing it for a
18 different reason. You understand that concept,
19 right?

20 MR. GARDNER: Objection. Calls for a
21 hypothetical.

22 THE WITNESS: Yeah. It's a hypothetical

1 to which the answer is always going to be yes. So
2 to the extent that makes you happy, sure.

3 BY MR. GERSCH:

4 Q Okay. So you do understand that concept.
5 So when that occurs, when it is the case that the
6 decision-maker puts forth a stated rationale,
7 which is, in fact, not his real rationale, is it
8 your understanding that we should pay no attention
9 to his real rationale and focus only on his stated
10 rationale?

11 MR. GARDNER: Objection. Calls for
12 hypothetical objection. Calls for a legal
13 conclusion.

14 THE WITNESS: I'm not going to answer
15 that question.

16 MR. GARDNER: Would now be a good time
17 for a break? We've been going about an hour.

18 VIDEOGRAPHER: This concludes Media Unit
19 Number 5. The time on the video is 3:11 p.m. We
20 are off to record.

21 (Off the record.)

22 VIDEOGRAPHER: This begins Media Unit

1 Number 6. The time on the video is 3:37 p.m. We
2 are on the record.

3 (Plaintiffs' Exhibit 28, Memo, was
4 marked.)

5 BY MR. GERSCH:

6 Q Mr. Comstock, we're back on the record.

7 After the Department of Justice made
8 their formal request for the addition of a
9 citizenship question in December of 2017, you
10 understand that the Census Bureau did some
11 analysis with respect to that request, right?

12 A Correct.

13 Q All right. And one of the things that
14 the Census Bureau produced is a document that's
15 been marked Exhibit 28.

16 A Okay.

17 Q Is that fair to say?

18 A It appears to be a memo from John Abowd
19 to the Secretary, so will -- oh, it's marked
20 draft, so --

21 Q Dated January 19, 2018, as you say, from
22 John Abowd, Chief Scientist at the Census Bureau,

1 to Secretary Ross through Karen Dunn Kelley.

2 You've seen this before, haven't you?

3 A I don't know that I've seen this
4 particular draft. It's marked draft, so I don't
5 know that this document ever made it up to the
6 Secretary's office.

7 Q Did you see a form of this document,
8 whether it was this one or not?

9 A I saw some form of this document, yes.

10 Q I want to direct your attention to the
11 one, two, three -- third full paragraph, last
12 sentence, and in it Mr. Abowd addresses
13 Alternative B -- and, by the way, you understand
14 Alternative B is adding a citizenship question to
15 the census, right?

16 A That appears to be what the memo says,
17 yeah.

18 Q So what Mr. Abowd reports is
19 Alternative B -- that is adding a citizenship
20 question -- is, quote, very costly, harms the
21 quality of the census count, and would use
22 substantially-less active citizenship status data

1 that are available from administrative sources.

2 You knew that that is what the
3 Census Bureau had concluded, right?

4 A Well, again, that's a -- this is a draft
5 pre-decisional memo. So I'm not sure if this was
6 the final document that was sent to us or not.

7 Q I'll represent to you that this
8 is -- that the record made in this case so far is
9 that this is the last draft produced. Does that
10 help you --

11 A Is that -- okay.

12 Q I'm happy if you want to consult with
13 your counsel.

14 MR. GARDNER: If you -- you can answer
15 the question, yes.

16 THE WITNESS: Sure. Assuming this is the
17 final version, then that's what the document says,
18 yes.

19 BY MR. GERSCH:

20 Q That's not my question. You came to
21 understand, isn't that right, that the view of the
22 Census Bureau was that asking the citizenship

1 question is very costly, harms the quality of the
2 census count and would use substantially-less
3 citizenship status than are available from
4 administrative sources?

5 A I would agree that that's the summary
6 statement here. That it overstates the case they
7 made further in the document. But that is not an
8 accurate representation of what's actually
9 reflected in the document.

10 Q I want to make sure I understand your
11 testimony. You're saying you disagree with their
12 conclusion?

13 A I disagree with that characterization as
14 being the final conclusion of the Census Bureau,
15 yes.

16 Q Ah. Okay. So you think that what I just
17 read to you doesn't fairly reflect the view of the
18 Census Bureau; is that right?

19 A I think that reflects the view of
20 Dr. Abowd and that it's very imprecisely stated.
21 If you read the rest of the memo, it provides more
22 detail, and so I would not agree with the

1 statement, because it's not backed up in the
2 document that it would be very costly. That's a
3 relative term. And that it would use
4 substantially-less accurate, I disagree with those
5 statements.

6 Q Yeah. I understand, and I stipulate that
7 you disagree with them. My question is a little
8 different. I'm asking if you understand this is
9 the position of the Census Bureau, whether you
10 agree with it or not, and I stipulate that you
11 don't.

12 A And just, again, I'm being very clear
13 that this sentence taken out of context, I would
14 say is not the position of the Census Bureau. The
15 position of the Census Bureau is reflected in this
16 full memo, which provides greater detail, which is
17 not, I would say, accurately characterized in this
18 summary statement at the front.

19 Q Did you ever meet with the folks at the
20 Census Bureau about this analysis?

21 A Yes, we did.

22 Q Okay. When did you do that?

1 A I couldn't tell you the exact date.

2 Q Who did you meet with?

3 A Dr. Abowd, Dr. Jarmin. It was a large
4 meeting.

5 Q And Dr. Abowd and Dr. Jarmin, they stood
6 by this analysis, right, the analysis in
7 Exhibit 28?

8 A I'd say that, yeah, they stood by the
9 entire analysis, not necessarily that statement.

10 Q And the entire analysis includes the
11 statement that I read to you, right?

12 A Again, you're -- I think you're taking a
13 single statement out of context.

14 Q My question is a little different. I'm
15 saying when you said, they stood by the entire
16 analysis, that includes the statement that I read
17 you?

18 A And, again, I will say that I think
19 you're trying to get me to say that particular
20 statement represents the view of the
21 Census Bureau, and that is not my understanding.

22 Q Okay. When you say it's not your

1 understanding, at no point did Dr. Jarmin or
2 Dr. Abowd say, no, we don't believe that
3 Alternative B is very costly, harms the quality of
4 the census count and would use substantially-less
5 accurate citizenship status data that are
6 available from administration sources; isn't that
7 right? They never took it back?

8 A We never asked them to take it back.

9 Q And they never did?

10 A I don't know if they took it back or not.

11 Q In your presence, sir.

12 A Again, they were never asked, to my
13 knowledge, to take that statement back, so there
14 would be no reason for them to take it back.

15 Q And they didn't take it back, did they?

16 A I don't know whether they took it back.

17 Q In your presence, they didn't take it
18 back?

19 A Again, I look at their entire memo, not
20 that statement.

21 Q I'm not asking that question. They
22 didn't take this statement back that I just read

1 to you three times?

2 A Again, my point is, they were never asked
3 to take it back, so there would be no reason for
4 them to take it back.

5 Q I just want there to be no
6 misunderstanding, Mr. Abowd [sic], if at trial
7 you're going to say they took it back, I want to
8 hear that right now.

9 MR. GARDNER: He's not Mr. Abowd.

10 BY MR. GERSCH:

11 Q I'm sorry, Mr. Comstock. It's late in
12 the day.

13 Mr. Comstock, if you're going to say at
14 trial that Dr. Abowd or Dr. Jarmin took this
15 statement back, I want to hear that right now.
16 Can we agree on that, that you'll tell me right
17 now?

18 A I will agree -- I will agree that I would
19 say that is not representative of the data that
20 was presented to us in the course of extensive
21 discussions. That that statement is an early
22 statement that mischaracterizes the final

1 conclusions that we understood.

2 Q When you say earlier, it's the statement
3 as of the January 19th memo, you don't disagree
4 with that?

5 A Again, I'm not contesting they provided
6 this investigation.

7 Q Focus on timing. You said this was an
8 early statement and you don't think it was
9 reflective of their final conclusions.

10 My question is: You're not saying it
11 doesn't reflect their position as of January 19th,
12 are you?

13 A I am saying, again, that I think you're
14 taking a single statement out of context and
15 trying to represent it has the position of the
16 Bureau as conclusive, and I'm saying I disagree
17 with that statement.

18 Q Let me show you -- let's mark this as
19 Exhibit 29.

20 (Plaintiffs' Exhibit 29, Memo, was
21 marked.)

22 BY MR. GERSCH:

1 Q You see what's been marked as Comstock
2 Exhibit 29, it is a March 1, 2018 memo from
3 Dr. Abowd for Secretary Ross, Bates stamp first
4 Page 001308.

5 Do you have that in front of you?

6 A I do.

7 Q Have you seen this document before?

8 A I believe I've seen this document.

9 Q Okay. And this document relates to an
10 Alternative D, right?

11 A Correct. But I'll note, again, it's
12 marked draft, and I'm just mystified as to why we
13 keep getting draft documents as opposed to finals.
14 Certainly draft documents don't normally come to
15 us.

16 MR. WALSH: Counsel, would it be possible
17 to hand out --

18 MR. GERSCH: Oh, I'm sorry.

19 MR. WALSH: Thanks.

20 BY MR. GERSCH:

21 Q This is about Alternative D; is that
22 right?

1 A That's correct. But I'm still asking a
2 question, why am I getting a draft version of this
3 instead of a final?

4 Q I don't get to testify. All I can do is
5 ask the questions.

6 And Alternative D was the idea of
7 Secretary Ross, that perhaps you could combine
8 Alternative B, which is asking the citizenship
9 question of every household in the decennial
10 census, and Alternative C, which was don't ask the
11 question but use administration data to figure out
12 citizenship status, correct?

13 A Correct.

14 Q And at the back of this memo, the last
15 sentence says, "In sum, Alternative D would result
16 in poorer quality citizenship data than
17 Alternative C. It would still have all the
18 negative cost and quality implications of
19 Alternative B outlined in the draft January 19th
20 memo to the Department of Commerce."

21 You saw this at the time, right?

22 A Again, I can't say that this was the

1 document I saw, because I did not see something
2 marked draft pre-decisional V10.

3 Q You think you saw a version of it that
4 didn't have draft on it?

5 A I have no idea. But we don't typically
6 see documents that say draft.

7 Q I'll represent that we've never seen a
8 version of either of these documents that aren't
9 marked draft. If there is one -- if there are
10 versions, I would like them right now.

11 MR. GARDNER: I represent we've produced
12 what we have.

13 BY MR. GERSCH:

14 Q Regardless of the format, you became
15 acquainted with the views of Census that
16 Alternative B would result in poorer quality
17 citizenship data than Alternative C and still have
18 all the cost and quality implications of
19 Alternative B outlined in the draft January 19th
20 memo to the Department of Commerce; you became
21 acquainted with that conclusion of theirs, right?

22 A I did.

1 Q Okay. By the way, you'll notice it
2 says -- this refers to the January 19th memo as
3 being a draft.

4 A Okay. Like I said --

5 Q Do you see that?

6 A I see it. That it says that, yes.
7 Perhaps that is what they provided to us. I don't
8 know. We produced whatever is in the record, so
9 if this is what's in the record -- as long as I'm
10 being given the final version, then okay.

11 Q All right. You're not saying that the
12 Census Bureau took back the conclusion reflected
13 in this last paragraph that I've read you from
14 Exhibit 29, are you?

15 A Again, I think there was iterative
16 exchange in which the conclusions of the
17 Census Bureau to staff and some of their
18 assertions did not hold up under
19 cross-examination.

20 Q Whether you think they held up or not, my
21 question to you is: Did the Census Bureau ever
22 take back the conclusion that's in the last

1 paragraph of this March 1 memo?

2 A You'd have to ask them.

3 Q In your presence, did they say any such
4 thing?

5 A I didn't ask them to take it back.

6 Q I'm not asking whether you asked them.
7 I'm asking -- withdrawn.

8 There were other people in the meeting
9 besides you, right?

10 A There were a series of meetings, so --

11 Q How many meetings did you have about this
12 memo, this March 1 memo?

13 A I couldn't tell you.

14 Q About?

15 A Might have met once or twice. I really
16 couldn't tell you.

17 Q And who did you remember being there
18 besides Dr. Abowd and Dr. Jarmin?

19 A Again, I don't know if it was
20 specifically on this memo or this presentation or
21 whether they sent it to us. There were multiple
22 meetings on the question. Who was at each

1 meeting, I couldn't tell you.

2 Q I think it would be fair to say there
3 were multiple meetings about Census Bureau's
4 analysis of the citizenship question, right?

5 A Yes.

6 Q Okay. And what's your best recollection
7 of how many meetings there were?

8 A I don't know. Two or three.

9 Q And if this memo is dated March 1 and the
10 decisional memo is dated March 26th. What's your
11 best recollection about when the last -- the last
12 meeting was, the last of these two or three
13 meetings?

14 A Probably somewhere in the vicinity of
15 March 20th.

16 Q Okay. And my question simply to you is,
17 sir: Did the Census Bureau people ever say we're
18 taking it back, you've convinced us, we don't
19 agree with the conclusion we put forth in the last
20 paragraph?

21 A No.

22 Q And did you ever have -- withdrawn.

1 Did you have a meeting about the wording
2 of the March 26th memo with the Census Bureau?

3 A I don't believe so.

4 Q You didn't have a meeting with Dr. Abowd
5 with Secretary Ross there on the morning of the
6 26th or thereabouts?

7 A No, not to my recollection. But it's
8 entirely possible.

9 Q So it's your -- and all I can ask for is
10 your best recollection.

11 It's your best recollection that you
12 never had a meeting with the Census Bureau about
13 the wording of the March 26 decisional memo?

14 A Not that I recall, no.

15 Q Did you ever have any analysis of the
16 citizenship question prepared by experts other
17 than the folks at the Census Bureau?

18 A Not that I know of, no.

19 Q Did you ever get any input from somebody
20 with technical expertise with respect to the
21 Census Bureau's analysis of the citizenship
22 question who was not from the Census Bureau?

1 A No.

2 Q Did anyone review the Census Bureau's
3 analysis of what was wrong with the citizenship
4 question who was not a lawyer?

5 A The Secretary.

6 Q Other than the Secretary?

7 A Karen Dunn Kelley.

8 Q Other than the Secretary and Karen Dunn
9 Kelley?

10 A Obviously, Dr. Jarmin, Dr. Abowd.

11 Q I'm talking about people outside the
12 Census Bureau.

13 A Census Bureau.

14 Well, let's see -- well, Wendy Teramoto
15 might have. But, no, primarily would have been
16 Office of General Counsel doing the review.

17 Q And you?

18 A And me.

19 Q And you're a lawyer?

20 A Yes, I am a lawyer.

21 Q All right. Let's mark the decisional
22 memorandum as Exhibit 30.

1 (Plaintiffs' Exhibit 30, Decisional
2 memorandum, was marked.)

3 BY MR. GERSCH:

4 Q Mr. Comstock, I show you what's been
5 marked as Exhibit 30. This is Secretary Ross's
6 March 26, 2018 decisional memorandum with his
7 signature affixed to it, correct?

8 A Yes.

9 Q I just have a few questions on that.
10 I may have fewer than I thought.

11 Let me just drop back to Exhibits 28 and
12 29. The Census Bureau analysis for a second --

13 A Uh-huh.

14 Q -- and then we'll get to Exhibit 30.

15 With respect to the Census Bureau
16 analysis, you understood that they researched the
17 question about the citizenship question, they
18 researched that by looking at information from the
19 decennial -- past decennial censuses, right?

20 A Mostly the long form, yes.

21 Q And past ACS --

22 A Correct.

1 Q -- surveys, right?

2 A Yes.

3 Q You said mostly the long form, but also
4 the short form, right? They did a comparison
5 between response rates from the short form and
6 response rates on the long form, right?

7 A Right.

8 Q And the long form, we're talking about
9 something that's filled out by on the order of 300
10 million people or something -- withdrawn.

11 It reflects data on 300 million people?

12 A Well, the long form is --

13 Q I should have said the short form.
14 You're right. Let me put it to you again.

15 The short form reflects data on
16 approximately 300 million people?

17 A That would be about right, yeah.

18 Q And it's filled out by over 100 million
19 people, right?

20 A I couldn't answer that question. I don't
21 know.

22 Q It's a larger number.

1 A I think it's 169 million households or
2 something.

3 Q And the ACS, roughly, how many people
4 fill out the ACS in rough terms?

5 A My recollection is it's about two to
6 three -- two and half to three percent per year.

7 Q Two and half to three percent of the
8 total population?

9 A Total number of households.

10 Q And the number of households you think
11 are 160 million?

12 A You'd have to look at the data.

13 Q But that's --

14 A In the ballpark, yeah.

15 Q So the 2 or 3 percent that fill out the
16 ACS, those are millions of people, right?

17 A Oh, yeah. Right.

18 Q Okay. And you'd call -- withdrawn.

19 When the Census Bureau does analyses
20 based on their findings from the decennial census
21 and the ACS --

22 A Uh-huh.

1 Q -- those are empirical analyses, right,
2 they count?

3 MR. GARDNER: Objection. Form.

4 THE WITNESS: You'd have to ask the
5 Census Bureau how they do their analysis.

6 BY MR. GERSCH:

7 Q Right. But you understand what empirical
8 means, right?

9 A I understand the use of the term, but I
10 don't know if all of their analyses are based on
11 empirical or some other method.

12 Q Certainly, some of their analyses are
13 empirical, right?

14 A Sure. And some are sampling and some of
15 them are imputation. They use a variety of
16 statistical methods.

17 Q Just a few more questions. Now, turn to
18 Exhibit 30 if you would and turn to Page 7.

19 A Yeah.

20 Q Last paragraph, first sentence reads,
21 "The Department of Commerce is not able to
22 determine definitively how inclusion of a

1 citizenship question on the decennial census will
2 impact responsiveness."

3 You saw that, right?

4 A Yep.

5 Q It says the Department of Commerce is not
6 able to determine definitively. What does that
7 mean, determine definitively?

8 A What it says. In other words, the
9 evidence presented to us was not determinative,
10 and it was not definitive that there would be a
11 drop in response rate. There was a widely-held
12 belief that there would be a drop in response, but
13 many of those same people that they were not
14 answering the citizenship question, were already
15 not answering the census because of distrust of
16 government, because of whatever the other reasons
17 may be.

18 So they could not identify with any
19 specificity that the addition of a citizenship
20 question would, in fact, cause a decrease in
21 response rate. They estimated there could be a
22 decrease of a certain number of households, which

1 was less than half a percent. And based on the
2 size and volume of the exercise we were
3 undertaking, that is not sufficient to say it's an
4 insurmountable obstacle.

5 MR. GERSCH: I'll move to strike it as
6 nonresponsive.

7 BY MR. GERSCH:

8 Q My question --

9 A It was responsive.

10 Q What do you mean by definitively?

11 MR. GARDNER: Objection. Asked and
12 answered.

13 THE WITNESS: What I mean by definitive
14 is they did not provide evidence that you could
15 draw a straight line and say if you do this, this
16 will happen. They speculated it, and they drew
17 some conclusions based on other information, but
18 logical people can look at that information and
19 say, yes, but that's not a necessary conclusion
20 that, in fact, as was pointed out, the same
21 hard-to-count populations who were already not
22 responding to the census were likely the very same

1 ones that might not answer the census.

2 And just to your point, just to
3 illustrate this, we do know from the ACS that
4 70 percent of the people who are presented with
5 the citizenship question answer it correctly, who
6 are, in fact, noncitizens and 30 percent don't.
7 So it doesn't necessarily mean that you add a
8 citizenship question and people refuse to answer.
9 We have a population that does answer.

10 I know that's not the answer you wanted.

11 BY MR. GERSCH:

12 Q Mr. Comstock, we're missing each other,
13 so let me try it a little differently.

14 I'm not asking you whether you didn't
15 think the Census Bureau's answer was definitive.
16 I'm asking what is -- what would be -- let's try
17 it this way, what would you consider to be
18 definitive evidence?

19 A If they had evidence that showed that the
20 addition of a citizenship question would cause a
21 number of people that otherwise would have
22 responded to the census to not respond.

1 Q And what would they need to show you
2 that?

3 A They would problem have to put the
4 question on the decennial census and compare it to
5 prior decennial censuses and eliminate for the
6 errors. And, unfortunately, they don't have that
7 data from when they were asking that question, so
8 they couldn't make the comparisons.

9 Q Well, they could have done it on a test
10 basis for the 2020 census, right?

11 A They already asked the ACS to 43 million
12 households. So we'd asked and answered that
13 question already.

14 Q My question --

15 A It's been well tested.

16 Q My question is: They could do it on the
17 2020 census on a trial basis, right?

18 A And that's, basically, what the Secretary
19 has determined to do.

20 Q No. The Secretary has not decided to do
21 it on a trial basis. He wants everyone asked,
22 right?

1 A Well, that would be a trial basis.

2 Q Let me do it differently. You could do
3 it on the 2020 census as a test where it's being
4 asked as a sample of the people, right?

5 A That would not give you -- actually, that
6 would give you no more information than you get
7 from the ACS, so we already have that information.

8 Q You think asking the question on the
9 decennial census is the same thing as asking on
10 the ACS?

11 A No, I don't.

12 Q Okay. How about a randomized control
13 study of some kind, randomized controlled testing?

14 A We already have that.

15 Q You think you already have that?

16 A Sure, through the ACS.

17 Q Okay. Was a proposal to do a randomized
18 controlled test in May of this year from the
19 Census Bureau?

20 MR. GARDNER: Objection. Lacks
21 foundation.

22 THE WITNESS: Not that I'm aware of.

1 BY MR. GERSCH:

2 Q You never heard that Victoria Velkoff
3 proposed conducting a randomized controlled test
4 in May of this year?

5 A No.

6 Q This is the first time you're hearing
7 this?

8 A Yes.

9 MR. GERSCH: Okay. We can go off for a
10 second.

11 VIDEOGRAPHER: We're going off the
12 record. The time on the video is 4:02 p.m.

13 (Off the record.)

14 VIDEOGRAPHER: We're back on the record.
15 The time on the video is 4:04 p.m.

16 MR. GERSCH: Mr. Comstock, thank you very
17 much. Those are all the questions I have at this
18 time.

19 Our view is there is certain information
20 we haven't received from the government, and to
21 that extent, we are keeping the deposition open,
22 but this concludes my questions for today.

1 MR. GARDNER: And our position is the
2 deposition is concluded after today.

3 THE WITNESS: Thank you for your
4 questions.

5 EXAMINATION BY MR. ROSENBERG:

6 Q And good afternoon, Mr. Comstock. My
7 name is Ezra Rosenberg. I think I introduced
8 myself to you. Although I might have used your
9 wrong name when I first introduced myself.

10 A That's okay.

11 Q I represent the City of San Jose and
12 Black Alliance for Just Immigration in the case
13 that's been venued in the North District of
14 California.

15 A Okay.

16 MR. ROSENBERG: And can everyone hear me
17 down -- can you hear me?

18 MS. BOUTIN: Little louder, please.

19 BY MR. ROSENBERG:

20 Q And I'll try to be short and sweet. Let
21 me just back up a bit.

22 A Okay.

1 Q The initial impetus for putting the
2 citizenship question on the 2020 census was not
3 DOJ's idea; is that correct?

4 A That's correct.

5 Q It was Secretary Ross's idea, I think
6 you've testified to that, correct?

7 A He was the one who asked me to
8 investigate it, yes.

9 Q He told you sometime shortly after he was
10 confirmed that he wanted the question on the 2020
11 census, correct?

12 A He asked me to explore putting it on,
13 yes.

14 Q Well, he actually said he requests the
15 question be put on the census, correct?

16 A That was the way he phrased it, yes.

17 Q You said you would make that happen,
18 correct?

19 A I said I would do my best.

20 Q And you would get the citizenship
21 question in place, I think was -- were your words?

22 A I said I would work to get that in place.

1 Q And he asked you several times during the
2 year what progress you were making on this; is
3 that correct?

4 A That's correct.

5 Q And you met with Mary Blanche Hankey at
6 DOJ as a result of that, correct?

7 A Correct.

8 Q And you wouldn't have met with her if
9 Secretary Ross hadn't ask you to do what you can
10 to put this citizenship question on the census,
11 correct?

12 A That's correct.

13 Q And the only subject that you talked to
14 Ms. Hankey about at that meeting was the
15 citizenship question, correct?

16 A No. I'm not sure that's the case.

17 Q What else did you talk to her about?

18 A I think we talked generally about what
19 the Department of Commerce and Department of
20 Justice overlap on, what we work on. So it was
21 just broader conversation, but the primary focus
22 was on the citizenship question.

1 Q And then you memorialized or at least you
2 summarized your discussion with her in the memo
3 that you sent to Secretary Ross on September 8th,
4 correct?

5 A That's correct.

6 Q And take a look at what's been marked as
7 C15, please. That's it. Yep.

8 The first paragraph you see that there's
9 a sentence -- well, it reads, starting with the
10 third sentence, "We" -- meaning you and
11 Ms. Hankey --

12 A Uh-huh.

13 Q -- met in person to discuss the
14 citizenship question."

15 A Right.

16 Q "She said she," and then it's blocked
17 out, right?

18 A Yes.

19 Q Now, this is something that you wrote
20 that's been blocked out, correct?

21 A Correct.

22 Q Do you know why it's been blocked out?

1 A You'd have to ask the Justice Department
2 redactors.

3 Q Do you -- without saying what is said
4 there, do you know what you wrote there that's
5 been blocked out?

6 A I don't recall.

7 Q You did not ask her for legal advice, did
8 you?

9 A No.

10 Q Do you have any reason to believe there
11 is some privileged information in what's been
12 blocked out?

13 MR. GARDNER: Objection. Calls for a
14 legal conclusion.

15 MR. ROSENBERG: He's always the client,
16 and the client holds the privilege.

17 THE WITNESS: I don't know what it says,
18 so I trust the folks who redacted it believe
19 there's a conclusion of some kind that is relevant
20 to the investigation.

21 BY MR. ROSENBERG:

22 Q Anyone at Commerce who was more involved

1 in the citizenship question other than you during
2 the period from the time you came to Commerce
3 until the citizenship question issue was resolved?

4 A Probably not, no.

5 Q Let me -- take a look at C5 that's been
6 marked, which is the supplemental memorandum.

7 A Uh-huh. I've got it somewhere. It's a
8 supplemental memorandum.

9 Q It's dated June 21 --

10 MR. GARDNER: You want to look at my
11 copy?

12 THE WITNESS: Okay. All right. Go
13 ahead.

14 BY MR. ROSENBERG:

15 Q When did you first hear that this
16 document was going to be created?

17 A Sometime shortly before June 21st.

18 Q Do you recall approximately how many days
19 before June 21st?

20 A I don't.

21 Q But before you got a copy of the
22 document; is that correct?

1 A No. I think, actually, the first time I
2 knew about it was when I was handed a copy of the
3 document.

4 Q So all of a sudden, it popped up on your
5 desk one morning, our your computer?

6 A Right. Again, as I think I stated
7 before, this was Office of General Counsel with
8 Commerce was handling the litigation in
9 conjunction with Department of Justice who
10 represents us. So they were having conversations
11 on this matter. I would have been called in
12 simply to the point of saying, okay, this is being
13 requested, do you have any thoughts or edits on
14 it?

15 Q So just so it's clear, you did not know
16 that it was being prepared until you saw the first
17 draft?

18 A That's correct.

19 Q Were you surprised to see it?

20 A I didn't think it was necessary, but if
21 that's the advice of counsel, we follow it.

22 Q You understood that this was a supplement

1 to the March 26th determination by Secretary Ross?

2 A I understand that it's a supplement to
3 the administration record.

4 Q And you --

5 A I don't think it supplements the decision
6 by Secretary Ross.

7 Q You understood it supplements the
8 administrative record and you understood this was
9 a pretty important document, did you not?

10 A Not being experienced in this litigation,
11 I couldn't say exactly how important this was or
12 not.

13 Q Do you have an understanding as to the
14 reason that this document was created?

15 A My understanding was the reason this
16 document was created was the Department of Justice
17 felt it would be advisable in this litigation.

18 Q Was there anything in the supplemental
19 memorandum that was not known at the time that the
20 Secretary issued his March 26th determination?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: No. I don't think there's

1 anything in this memorandum that was not done at
2 the time of the decision.

3 BY MR. GERSCH:

4 Q After you received the draft of the
5 memorandum, did you discuss it with anyone within
6 Commerce, other than attorneys?

7 A Just the attorneys.

8 Q You did not discuss, at all, with
9 Secretary Ross?

10 A Other than advising him that we -- this
11 has been recommended to sign and that we've
12 reviewed it and made a few edits, no.

13 Q Did he ask you why it was being
14 recommended?

15 A I'd already provided that explanation.
16 DOJ was suggesting that we needed it for
17 litigation. He's not a litigator, so he's not
18 going to question that.

19 Q Was he surprised when he saw this? Did
20 he express surprise to you?

21 A Not particularly. I mean, he just said,
22 if that's what they recommend, fine.

1 Q Now, I think you testified that you were
2 one of the two persons who were principally
3 involved in the drafting of the March 26th
4 determination; is that correct?

5 A I was one of the two principal staff.
6 There were a number -- quite a number of other
7 people who reviewed it.

8 Q Right. But you were one of the principal
9 draft persons; is that correct?

10 A I was principal -- James Uthmeier, I
11 think, did the bulk of the drafting, and I did a
12 lot of the editing.

13 Q During the course of your preparation of
14 the March 26th determination, did you consider
15 including in the March 26th determination any of
16 the information that's in the supplemental
17 memorandum that's identified as C5?

18 MR. GARDNER: I'm going to object on the
19 grounds that calls for disclosure of information
20 subject to deliberative process by which I
21 instruct the witness not to answer.

22 BY MR. ROSENBERG:

1 Q Are you going to follow counsel's advice?

2 A I'll follow my counsel's advice, yes.

3 Q By the way -- by the way, I think you
4 testified that you made some edits to C5, the June
5 21st supplemental memorandum; is that correct?

6 A I think I may have suggested a wording
7 change or two.

8 Q Do you know what wording change or two
9 you made?

10 A I have no recollection of that.

11 Q Did you maintain the original draft of
12 the June 21st memorandum?

13 A I imagine I made it -- my edits in
14 electronic form, but that would be, probably,
15 privileged, under the administrative record.

16 Q Let's turn to C30, which is the
17 March 26th memo. Now, is it stated anywhere in
18 this memorandum that the Secretary had begun,
19 considering the question of adding the citizenship
20 question to the census almost a year prior or more
21 than a year prior to the March 26th memorandum?

22 A It wouldn't be relevant to the

1 memorandum.

2 Q So you don't think that's important
3 information?

4 A The government has lots of processes
5 where -- and I've been involved in lots of
6 processes throughout the government where things
7 have been under consideration for months, years,
8 decades, even, prior to an administrative record,
9 and that's not usually included in the decision.

10 The question is once you began the formal
11 action of considering this decision and in which
12 you're presented with a situation where you need
13 to make a decision, you document at how you arrive
14 at your conclusion.

15 Q It's your testimony that the formal
16 action is when?

17 A When we received the letter from the
18 Department of Justice. Because prior to that,
19 this was all speculation.

20 Q Well, but prior to that, you had been
21 directed by the Secretary of the Commerce to put
22 the citizenship question on the census --

1 A I'd --

2 Q -- isn't that correct?

3 A I'd been directed to explore putting a
4 citizenship question on the census.

5 Q He said he wanted it on the census,
6 correct?

7 A That was certainly his expressed
8 interest.

9 Q It was an expressed statement, was it
10 not?

11 A That's the way he phrased it. But,
12 again, he can't put something on the census
13 without having the legal authority or process in
14 place to do so.

15 Q You agree it would have been more
16 accurate if the first sentence of C30 said, as you
17 know, pursuant to my request on December 12, 2017,
18 the Department of Justice requested that the
19 Census Bureau reinstate a citizenship question;
20 isn't that more accurate?

21 A I wouldn't agree that's more accurate.

22 Q Isn't that what happened?

1 A Again, the Department of Justice decision
2 to ask -- send a letter requesting this is a
3 decision they made independently. We cannot
4 compel them to make that request.

5 Q By the way, what does Section 2 of the
6 Voting Act provide?

7 A Well, my understanding of it -- and,
8 again, it's been established that I'm not a Voting
9 Rights Act expert -- is that there are cases in
10 which you might have a population where as they
11 set up a district, you have two minority
12 populations. If one of those minority
13 populations, for example, Hispanics population,
14 has a large under of undocumented people, they
15 might appear on paper to have a majority. When,
16 in fact, they can never actually execute that
17 majority because they don't have enough Citizen
18 Voting Age Population people to carry that out.

19 Now, under the census, we already ask
20 about age and we ask about race, so we can
21 determine those two questions. What you can't
22 determine is how many people of that population

1 are, in fact, eligible to vote.

2 Now, using the ACS data, the census
3 provides estimates that the Justice Department
4 uses for that very purpose. We know, in fact, as
5 a result of this analysis, in the Census Bureau's
6 efforts to promote Alternative C, they, in fact,
7 did an analysis of that ACS data, and lo and
8 behold, it came back that the data that we've been
9 providing to the Justice Department is, in fact,
10 at a fairly significant error. It's off by a
11 factor of about a third. And so in light of that
12 information, you'd absolutely want to go forward
13 with this.

14 Q But the Census Bureau, nevertheless,
15 recommended from a standpoint of accurate and
16 completeness and quality of the census that there
17 should not be a citizenship question added to the
18 census, as opposed to continuing to rely on ACS
19 data supplemented by the administrative records?

20 A No. In the process of this memorandum,
21 back and forth, they could not articulate a
22 rationale to support their belief that there would

1 be this decline in this response rate. Their
2 entire analysis relied on the assumption that
3 there would be this decline in response rate of a
4 certain percentage and that that would, therefore,
5 make the data less reliable.

6 What they couldn't refute was the fact
7 that under their proposed approach, they would
8 have had to impute -- again, based on statistical
9 models -- the citizenship of 25 million voting age
10 citizens. That was not a complete and accurate
11 picture as far as the Secretary was concerned. So
12 the Secretary said this is why we need to look at
13 combining the two approaches, B and C, to come up
14 with Alternative D. Because in the absence of
15 that, we don't have good enough data on which to
16 build the formula to impute those people that we
17 would have to because we don't have answers on
18 what their citizenship is. So that's the
19 rationale that's laid out in this memo, and as far
20 as I know, that's been the rationale that's been
21 the Secretary's all along.

22 Q But not the rationale that was accepted

1 by the Census Bureau, which nevertheless, rejected
2 as -- from a technical perspective, the
3 Secretary's rationale; isn't that correct?

4 A I disagree that they rejected it from a
5 technical perspective. They made some assumptions
6 in making their recommendation -- and that's
7 exactly what it is, it's a recommendation -- that
8 this would be the case.

9 Q Let me turn your attention to C30,
10 Page 001314, which is Page 2 of the March 26th
11 memo. And turning your attention to the Option A,
12 the third line in the sentence that says,
13 "Additionally, the block group levels CVAP data
14 currently obtained through the ACS has associated
15 margins of error" --

16 A Correct.

17 Q -- "because the ACS is extrapolated based
18 on the sample servers of the population."

19 A That's correct.

20 Q Do you know what the margins of errors
21 are that are referred to in this sentence?

22 A I think you go on and see, you'll see it

1 described later in the same memo, which is that
2 they have an error of approximately 30 percent, 28
3 to 34, I believe, is the range.

4 Yeah. If you look on Page 4,
5 "Census Bureau analysis showed that between 28 and
6 34 percent of citizenship self-responses for
7 persons with administrative records show are
8 noncitizen were inaccurate. In other words, when
9 noncitizens respond to long form or ACS questions
10 on citizenship, they inaccurately mark citizen
11 about 30 percent of the time. However, the
12 Census Bureau is still evolving its use of
13 administrative records. The Bureau does not have"
14 --

15 (Thereupon, the court reporter
16 clarified.)

17 THE WITNESS: This is in the -- under
18 Option C of Page 4.

19 MR. GARDNER: You're going to have to
20 slow down for the court reporter.

21 THE WITNESS: "So they inaccurately mark
22 noncitizen about 30 percent of the time. However,

1 the Census Bureau is still evolving its use of
2 administrative records, and the Bureau does not
3 yet have a complete administrative record set for
4 the entire population. Thus, using administrative
5 records alone would provide DOJ data with CVAP
6 data that was not a" -- "that would provide an
7 incomplete picture."

8 BY MR. ROSENBERG:

9 Q And that's your understanding of what
10 margins of error means as used on Page 01314?

11 A Well, yes. They're referring to that --
12 that margin of error they're referring to is the
13 28 to 34 percent they were off.

14 Q Do you know whether the data that would
15 be provided to DOJ if a citizenship question were
16 added to the 2020 census would also have margins
17 of error associated with that data?

18 A It would almost certainly have some small
19 margin of error, yes.

20 Q When you say a small margin of error, can
21 you quantify that?

22 A Well, yeah. I think if you look at the

1 decision memo, it spells out that by providing the
2 question on the census, you'll give 100 percent of
3 the population to answer that question. For
4 90 percent of the people that are citizens, that
5 is not a problem. For the remaining 10 percent,
6 approximately, again, based on -- again, on the
7 ACS error rate, you can expect that approximately
8 70 percent of those people will also answer that
9 data correctly. So you're looking at, basically,
10 what is the situation with the remaining
11 30 percent? And based of the data we get from the
12 actual responses, comparing that with the
13 administrative records, which we're also working
14 to improve, so that that 88.6 from the 2010 census
15 is expected to go up, should be closer to 90 to
16 95, we'll be able to narrow to down to about a 5
17 percent of the population that we'll have to
18 impute. It's a much smaller number than the
19 number that's being --

20 Q And that's your understanding of how the
21 phrase margins of error is used in the Secretary's
22 memo?

1 A Well, I'm not sure -- you're focused on
2 the words margins of error.

3 Q Right. All of my questions had to do
4 with the phrase margins of error.

5 A And you're saying --

6 Q I'm just trying to get your understanding
7 of the phrase.

8 A No. I was focusing on the ACS. I mean,
9 you're isolating the term margins of error.

10 Q Yes.

11 A When you do sampling or other things,
12 there is a margin of error associated with that,
13 and that margin of error can be larger or it can
14 be smaller. And so they would provide, typically,
15 a confidence interval connected with their data,
16 and, again, depending on how the survey is
17 conducted, it could be large or small.

18 Q Well, that sounds a little bit different
19 than what you testified to earlier, when I asked
20 you about the phrase margins of error as used in
21 the sentence I read to you from C003134.

22 A You'll have to remind me what the

1 sentence is again --

2 Q Sure. "The Census was additionally" --

3 A -- because I focused on the ACS.

4 Q -- "block group level CVAP data currently
5 obtained through the ACS has associated margins of
6 error because the ACS is extrapolated, based on
7 sample surveys of the population."

8 A And I believe that reference in the
9 context of this memo may be scientifically
10 incorrect, but it's referring to the fact that
11 there's this error in the data of roughly
12 30 percent. So this was not drafted by, quote,
13 scientists. So we may have inaccurately used the
14 term margin of error. But what the Secretary was
15 referring to was the fact that we had now learned
16 that the ACS data was fairly significantly
17 inaccurate.

18 Q Do you know whether the Census Bureau's
19 use of margins of error, quote, end quote, is the
20 same as you have just described?

21 A I have no idea. I mean, I would guess
22 that in other context, that the Census Bureau uses

1 the term margin of error differently. I'm saying
2 in the context of this memo, I think the reference
3 of margin of error is referring to that margin of
4 inaccurate information in the ACS. That is what
5 the Secretary was focused on in making his
6 decision.

7 Q I'd like to turn your attention to
8 001315, Page 3, the second full paragraph that
9 begins "the Census Bureau."

10 A Uh-huh.

11 Q And the Census -- I'm sorry -- the
12 sentence that reads, "However, neither the
13 Census Bureau, nor the concerned stakeholders
14 could document that the response rate would, in
15 fact, decline materially."

16 Do you see that?

17 A I see that.

18 Q Can you tell me what you understand the
19 word materially to mean?

20 A Yes. In that context, it's, basically,
21 saying they could not, as I explained earlier,
22 demonstrate that the decline because of the

1 addition of a citizenship question would be any
2 greater than the decline that we already
3 anticipated we would face because of the current
4 political climate and people's concerns about
5 government.

6 And, frankly, the folks bringing this
7 lawsuit are contributing to that. We already
8 anticipated this was going to be -- this census
9 was going to be more difficult than other
10 censuses, and that was a lot of the reasons behind
11 some of the changes that were made in the
12 lifecycle cost estimate. So we anticipated there
13 were going to be hard-to-count populations, and
14 many -- many of the same hard-to-count populations
15 would have been disinclined to answer the census
16 with or without a citizenship question.

17 Q When you say that the -- when you talk
18 about the material decline, are you talking about
19 the decline overall or are you talking about a
20 differential decline depending on what demographic
21 group is being discussed?

22 A If the data had shown conclusively that

1 the addition of a citizenship question would cause
2 a material -- in other words, significant and
3 major decline in any particular group, I'm sure
4 the Secretary would have considered that quite
5 carefully.

6 Q When the Secretary used the word material
7 or phrase material decline, was he referring to
8 any decline of any demographic group or was he
9 referring to a decline across the board?

10 A Again, based on the subject of the
11 discussion here, would there be a significant
12 increase in the number of nonresponse follow-ups
13 that we had to go do because people failed to
14 respond? The data that was being presented did
15 not isolate the citizenship question as being a
16 material source of potential decline. There were
17 a lot -- there was a lot of speculation that
18 would, there was a lot of assertions it would.
19 And upon review and analysis, it appears that many
20 of the same populations that were already going to
21 be difficult to count for lots of other reasons
22 would be the same people who might be disinclined

1 because of citizenship. So you cannot say that
2 adding citizen is going to materially increase the
3 nonresponse follow-up rate.

4 Q Can you quantify what you mean by a
5 material decline?

6 A Well, I mean, the Census Bureau,
7 basically, under their best analysis, was saying
8 that there might be a decline that would cause an
9 increase of \$27 and a half million. In a
10 \$15.6 billion budget, that is -- I mean, that's so
11 far within the margin of error it's not even a
12 fact.

13 Q Well --

14 A We could have a bad snow day that would
15 cause bigger damage than that.

16 Q Was -- do you consider an undercount
17 resulting from the addition of any question to the
18 census of a quarter of a percentage point in a
19 specific population to be material?

20 A I have no reason to believe the addition
21 of a citizenship question would cause such a
22 thing.

1 Q Whether it does or not, I'm trying to
2 quantify what you mean by material decline.
3 How --

4 A And, again, you're postulating a
5 hypothetical. And my point is that in the absence
6 of the context, would a quarter percent decline in
7 response because we added a question that, for
8 example, asked somebody their ethnicity, again,
9 that's a weighing thing that the decision-maker
10 has to make and say there may be a quarter percent
11 decline, but it's important that we get ethnicity
12 data.

13 Q But I'm --

14 A Same thing with gender, same thing with
15 race, same. You know, lots of questions are added
16 that may, in fact, result in a few people not
17 answering the census.

18 Q Well, now you're using the word a few
19 people not answering the census. I'm looking at
20 your language of material decline.

21 A Uh-huh.

22 Q Is a quarter percent decline in a

1 response of a demographic group a material decline
2 in your estimation?

3 A Again, without context, I can't give you
4 an answer. If that demographic group is composed
5 of 100 people, it may not be --

6 Q What if the demographic is Hispanics?

7 A I don't know that -- well, again, no.
8 That's a weighing question that the decision-maker
9 is free to make.

10 Q Again, you're going back to weighing.
11 I'm talking about the phrase declining material --
12 materially. I'm not weighing it yet. You can
13 weigh it later if you want. I'm just talking
14 about one side of the balance that I think you're
15 suggesting is being applied.

16 Is a quarter decline in response to the
17 census among Hispanics a material decline in your
18 estimation?

19 A The -- the -- I think the short answer
20 is, the decline identified by -- the potential
21 decline identified by the Census Bureau was not
22 material enough to outweigh the benefits the

1 Secretary saw in adding the question.

2 Q It still doesn't answer my question.

3 A You're asking me to answer in a
4 hypothetical, which I'm not going to do because I
5 don't have the number of Hispanic voters. I don't
6 know what 4 percent decline would represent. I --
7 it's impossible for me to evaluate. I've never
8 looked at the population numbers of Hispanics
9 versus any other.

10 Q Well, you know that the number of
11 Hispanics in American is in the tens of millions;
12 is that correct?

13 A I honestly haven't really given it much
14 thought.

15 Q Do you know if it's more than a million?

16 A I think it safe to say it's more than a
17 million.

18 Q More than five million?

19 A I think so.

20 Q More than ten million?

21 A Let's see. If the population of the
22 United States is 360 million, and I believe

1 Hispanic are somewhere in the 10, 12, 15 percent
2 range, they're, obviously, well above that.
3 They're like -- I don't know, like -- 79 million.

4 Q Of how many did you say?

5 A 70 -- I can't do the math that quickly,
6 so let's say, whatever, 70 million. I don't know.

7 Q Let's use 70 million. So if there
8 were -- let's make it easier, for my head. Let's
9 say there was a 1 percent decline in response rate
10 among Hispanics due to the inclusion of a question
11 on the census, would you consider that a material
12 decline?

13 A I would consider that a factor that you
14 need to take into account.

15 Q And if it were a 3 percent decline, would
16 you consider that even more of a factor?

17 A Three percent is greater than 1 percent,
18 so, presumably, it would be greater. But, again,
19 it depends on, again, what I'm deciding against.

20 Q Would you consider that material?

21 A That depends on the context.

22 Q The context of adding a question to the

1 census resulting in a 3 percent decline in
2 responsiveness among Hispanics?

3 A All of the factors outlined in this memo
4 are material. It's a question for the
5 decision-maker to decide which are -- which to
6 give greater or lesser weight to.

7 Q But the phrase here was material
8 decline --

9 A And, again --

10 Q -- correct?

11 A -- in the context of conducting a
12 nationwide census, the half percent change in
13 response rates for NRFU was not something we
14 considered material because there were lots of
15 other factors that would cause an even greater
16 decline.

17 Q And if the response rate was shown to be
18 greater than a half percent decline, if it was
19 shown to be a 3 percent decline?

20 MR. GARDNER: Objection. Calls for
21 hypothetical.

22 THE WITNESS: I understand you're trying

1 to get a certain answer, but I'm just telling you
2 in the context of this, in the context of this
3 memo, the half percent increase in NRFU response
4 rate was not material.

5 BY MR. ROSENBERG:

6 Q By the way, earlier you said that 30
7 percent of noncitizen citizens answering the ACS
8 citizenship question responded accurately. Do you
9 recall that?

10 A That was data provided by the Census
11 Bureau.

12 Q Okay. What, if any, evidence is there
13 that noncitizens would respond to a citizenship
14 question on the 2020 census questionnaire at a
15 more accurate rate than they currently do on the
16 ACS?

17 A That's -- I think we assumed in doing
18 this that they would continue at that potential
19 rate.

20 Q At a 30 percent inaccurate rate?

21 A Which is why you have to do both
22 administrative records and put the question on.

1 You can't do just one or the other.

2 Q But the administrative records could be
3 used with ACS; isn't that correct?

4 A No, they couldn't.

5 Q They could not be used --

6 A Because you can't extrapolate from the
7 ACS to the whole population.

8 Q No. That wasn't my question.

9 The administrative records could be used
10 in conjunction with the information from ACS?

11 A Again, you don't get an accurate sampling
12 because you're extrapolating from the ACS to the
13 larger population, so you can't apply your
14 administrative records across in the same way.
15 That's why the census was proposing to just use
16 administrative records and they were prepared,
17 apparently, to have to impute 25 million voting
18 age citizen citizenship records. Now, on what
19 basis, they would do that, we weren't sure.

20 Q But both Options C and D require some
21 imputation; isn't that correct?

22 A Potentially, to get a complete and

1 accurate count, because we don't have 100 percent
2 matching between the administrative records and
3 the respondents. Yes. That's correct.

4 Q Let me draw your attention to the period
5 around January 2018. Do you recall taking part in
6 the signing of the list of 35 questions to the
7 Census Bureau to answer?

8 A Yes. I helped prepare that list.

9 Q Do you -- who else helped prepare that
10 list?

11 A The Secretary, Karen Dunn Kelley,
12 James Uthmeier, myself. There may have been
13 others.

14 Q Were you the prime drafter?

15 A Of that particular list, I may have been
16 the prime assembler. I was not necessarily the
17 prime drafter of all the questions.

18 Q And what was your purpose -- what was the
19 purpose in proposing those questions?

20 A Basically, it has -- I think it was
21 pointed out earlier we got an analysis from the
22 Census Bureau that seemed to have a particular

1 viewpoint, and it wasn't well supported in some
2 cases. So those are the questions that arose
3 after reviewing their memo.

4 Q And when you -- after the questions were
5 formulated, whom did you send them to?

6 A I believe they were sent to the
7 Census Bureau.

8 Q And the idea was the Census Bureau would
9 answer the questions; is that correct?

10 A They would provide that input, yes.

11 Q And you gave them a deadline, did you
12 not?

13 A I imagine we did, yeah.

14 Q Four days; is that correct?

15 A I don't recall.

16 Q Was it your understanding that the
17 answers were going to be provided solely by the
18 Census Bureau to those questions?

19 A I believe all the questions were directed
20 to the Census Bureau, but if they were directed to
21 somebody else, then, obviously, they would provide
22 them.

1 Q But it was your understanding that the
2 Census Bureau would answer them; is that correct?

3 A Again, without going back and looking at
4 the documents and the accompanying emails, I can't
5 tell you exactly who it was. But my understanding
6 was, yes, they were drafted for the Census Bureau.

7 Q Did there come a time when you reviewed
8 the answers for the questions?

9 A I imagine there was.

10 Q Well, was there?

11 A Again, I know all of you are focused on
12 this case and everything else. This was one small
13 fraction of the work I was doing at that time. So
14 I'm quite certain I reviewed the answers. Exactly
15 when, I can't tell you. But, clearly, they
16 went -- the responses to those questions were
17 considered in the decision memo. So I, obviously,
18 reviewed them at some point.

19 Q Do you recall whether you reviewed those
20 responses all at once or some kind of rolling
21 basis?

22 A If memory serves, I believe the Census

1 responded back to some, and then provided
2 follow-up answers to others that took more time.

3 Q Do you recall whether in connection with
4 any of the questions the Census Bureau was asked
5 to change their answers to any questions?

6 A I believe -- well, I believe in one case,
7 they provided a response that indicated that there
8 was a very set format for putting questions on the
9 census. And we went back to them and said, how
10 can that be? You haven't -- there hasn't been a
11 question added to the long form? They went back
12 and reviewed and said, yes, that's correct. This
13 was the process we used for the ACS.

14 Q Let me -- let's have this marked as 31.

15 (Plaintiffs' Exhibit 31, Questions on
16 draft Census memo, was marked.)

17 BY MR. ROSENBERG:

18 Q Showing you what's been marked as --

19 MR. GARDNER: Ezra, we need a --

20 MR. ROSENBERG: Can you give me one more
21 copy?

22 I just need one. Thank you.

1 BY MR. ROSENBERG:

2 Q Showing you what's been marked as
3 Exhibit 31, have you ever seen this document
4 before?

5 A Again, I'd have to go back and check
6 emails. It appears to be an incomplete response
7 to the 35 questions.

8 Q And when you say it's an incomplete
9 response to the 35 questions, why do you say that?

10 A Well, Question 4 is not answered.
11 Question 9 is not answered. Question 11 is not
12 answered. Question 15 is not answered.
13 Question 20 is not answered. Question 27 is not
14 answered. It appears to be -- I'm not sure that's
15 the entire list, but some of that -- some of
16 these -- obviously, it's not a final, because at
17 least five questions are unanswered, so --

18 Q Let's have this marked as -- one question
19 on that. Turning our attention to Question 31 --

20 A Okay.

21 Q -- is that the question you were
22 referring to before as a question whose answer was

1 changed at some point?

2 A Yeah. Because this was -- as I said,
3 when we explored the question further, it became
4 evident that this was not, in fact, an accurate
5 representation for the process for the decennial.

6 Q Do you know when that answer was changed?

7 A I don't.

8 Is there a date on this?

9 Q We just give you them as we got them.

10 A No. Well, no, unfortunately nobody dated
11 this. So I don't know -- is there a -- do you
12 have a final --

13 Q Well --

14 A -- with all the questions answered?

15 Q You're going to have to tell me.

16 A I believe there was one where they
17 managed to answer all the questions.

18 Q Okay. Let's have this marked as the next
19 exhibit.

20 (Plaintiffs' Exhibit 32, Memo, was
21 marked.)

22 BY MR. ROSENBERG:

1 Q Can you identify -- first of all, have
2 you ever seen what's been marked as Exhibit 32?

3 A I'm flipping through it here. I believe
4 I've seen -- I can't recall for certain whether
5 this was the document, but I've seen, certainly,
6 something similar to the document, yes.

7 Q And the last part of this document, I
8 know it's a multi-document document --

9 A Right.

10 Q -- does have the 35 questions, all of
11 which are answered; is that correct?

12 A On a quick review, it looks like you're
13 correct, that they're all answered.

14 Q And the answer to Question 31 is the same
15 answer as was in Comstock Exhibit 31; is that
16 correct?

17 A Correct. But I note this is also marked
18 draft and predecision, so --

19 Q So -- well, let's deal with that, also.
20 We can represent to you that this is the only
21 version of the March -- of a document dated
22 March 1, 2018 that is -- and it's -- and they're

1 all marked draft for decisional -- I can't read
2 the whole watermark.

3 A Right.

4 Q Are you aware whether there was a
5 document that does not contain that stamp or
6 watermark?

7 A I don't recall.

8 Q And that is dated March 1, 2018; is that
9 correct?

10 A Correct.

11 Q Now, let me show you -- let me get this
12 marked as Exhibit 33.

13 (Plaintiffs' Exhibit 33, Questions on
14 draft Census memo, was marked.)

15 BY MR. ROSENBERG:

16 Q Have you seen that document before?

17 A Again, possible. I can't tell from
18 the -- without the accompanying emails to show the
19 traffic back and forth. I honestly can't tell you
20 when I would have seen which of these documents.

21 Q Now, do you know whether what's been
22 marked as Document 33 is the final iteration of

1 the answers to the questions?

2 A I don't honestly know that.

3 Q Now, turning your attention to the answer
4 to 31 --

5 A Uh-huh.

6 Q -- does that answer reflect a change in
7 the answer from the previous documents I've shown
8 you?

9 A Yes. It reflects a more accurate
10 statement of the response to the question.

11 Q Who drafted that answer?

12 A I don't know.

13 Q Do you know if the Census Bureau drafted
14 that answer?

15 A It would appear to be since it's a Census
16 document.

17 Q Who is Christa Jones?

18 A She's is the chief of staff for the
19 Census Bureau.

20 Q Who is Sahra Park-Su?

21 A Sahra Park-Su works in the Office of
22 Policy and Strategic Planning -- or actually did.

1 She is now at Bureau of Industry and Security.

2 Q Did she work for you, report to you, I
3 should say?

4 A Yes.

5 Q What was her title?

6 A She doesn't really have a title. She's
7 one of the staff that covers an area in the Office
8 of Policy Planning.

9 Q Was she involved in review of the answers
10 to 35 -- to the 35 questions?

11 A I don't know.

12 Q Did you task her with that?

13 A I did not, no.

14 Q Do you know if anyone did task her with
15 that?

16 A I don't know.

17 Q Let's have this exhibit marked as 34.

18 (Plaintiffs' Exhibit 34, Email, was
19 marked.)

20 BY MR. ROSENBERG:

21 Q Looking at what's been marked as
22 Exhibit 34, have you ever seen this document

1 before?

2 A No. I haven't.

3 Q And does it appear to be an email from
4 Sahra that contains the Question 31, "What was the
5 process that was used in the past to get questions
6 added to the decennial census or do we have
7 something similar where precedent was
8 established"?

9 Do you see that?

10 A That appears to be Question 31.

11 She pronounces her name Sahra, by the
12 way.

13 Q I'm sorry?

14 A She pronounces her name Sahra.

15 Q Sahra?

16 A Yes.

17 Q Okay. Do you see what has been blocked
18 out below that question?

19 A I see that there is a block of black
20 below the question, yes.

21 Q And do you see that that block, if you
22 compare it to the Exhibit C33, the answer, that

1 that block seems to be about the same size as the
2 amended answer in C -- in C34?

3 A You're comparing -- I don't know. It
4 depends on the font size being used.

5 Q Do you doubt that Sahra Park-Su may have
6 been the one who wrote the answer to Question 31?

7 MR. GARDNER: Objection. Calls for
8 speculation. Lack of foundation.

9 THE WITNESS: I was -- as you'll note,
10 I'm not on this email chain, so I don't know who
11 was involved in the drafting change.

12 BY MR. ROSENBERG:

13 Q Can you deny the possibility that she
14 wrote the answer to 31?

15 A I -- that's certainly possible.

16 MR. ROSENBERG: We'll go off the record.

17 VIDEOGRAPHER: This concludes Media Unit
18 Number 6. The time on the video is 4:48 p.m. We
19 are off the record.

20 (Off the record.)

21 VIDEOGRAPHER: This begins Media Unit
22 Number 7. The time on the video is 5:05 p.m. We

1 are on the record.

2 EXAMINATION BY MS. SENTENO:

3 Q Good afternoon, Mr. Comstock. My name is
4 Andrea Senteno and I'm counsel for the plaintiffs
5 in the LUPE v. Ross. That's in the Federal
6 District court in Maryland 8:18-CV-01570. And
7 LUPE stands for La Unión Del Pueblo Entero.

8 So I know we've talked a bit today about
9 your interactions with Mary Blanche Hankey and
10 with James McHenry, so I just have a couple
11 questions on that.

12 Do you understand correctly that it was
13 based on your description of -- of the
14 Department of Commerce's request to add the
15 citizenship question that Ms. Hankey told you that
16 it would be best appropriate to speak to
17 Mr. McHenry?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Yes. I don't know that I
20 went into great detail with her as to the nature
21 of the citizenship question, but as to who in the
22 department would handle Voting Rights Act and

1 citizenship questions.

2 BY MS. SENTENO:

3 Q So you did specifically ask who would
4 best be the appropriate -- who would be the most
5 appropriate person if you wanted to talk about the
6 Voting Rights Act and citizenship data?

7 A The use of the citizenship data by the
8 Justice Department, yes.

9 Q And based on that interaction, she
10 referred you to Mr. McHenry?

11 A Correct.

12 Q Okay. And do you understand correctly
13 that it was based upon that conversation or that
14 explanation with respect to the Department of
15 Commerce's request with Mr. McHenry that he then
16 referred you to the Department of Homeland
17 Security?

18 A I don't know why he referred me to the
19 Department of Homeland Security. He simply -- I
20 think, as I indicated before, indicated that the
21 Justice Department was a little busy on other
22 issues right now, and so this was not something

1 that high on their priority list.

2 Q And I know we've talked about this
3 before, but when you spoke with Mr. McHenry, did
4 you relay the same information that you'd relayed
5 to Ms. Hankey about wanting to talk about the
6 voting rights after voting rights enforcement and
7 citizenship -- and the use of citizenship data?

8 A In both cases, I spoke to them about
9 adding a citizenship question to the decennial
10 census. I don't recall whether we went into any
11 great detail about the rationale.

12 Q Did you ever have a conversation with
13 Donald Trump regarding the addition of the
14 citizenship question to the decennial census form?

15 A No.

16 Q And that includes during any transition
17 period?

18 A Correct.

19 Q I want to introduce Exhibit -- I believe
20 we said 35, Plaintiff's Exhibit 35 for the record.

21 (Plaintiffs' Exhibit 35, Trump campaign
22 email, was marked.)

1 BY MS. SENTENO:

2 Q This is Bates number 2643. And this is
3 an email that contains a Trump campaign email from
4 March 2008.

5 Have you been shown this email prior to
6 today?

7 A No. I'm not on this email.

8 Q Okay. Can I refer you to Page 2644?
9 It's the second page of this document.

10 A Okay.

11 Q Okay. And do you see what it has
12 included in the original email chain. This is an
13 image of a campaign email from the Trump campaign,
14 correct?

15 MR. GARDNER: Objection. Lack of
16 foundation.

17 THE WITNESS: It's rather small print,
18 but it appears to be something from the campaign,
19 yes.

20 BY MS. SENTENO:

21 Q Okay. And I'm going to recognize it's
22 small print, but I'm going to draw your attention

1 to the first sentence here of the campaign email,
2 quote, the President wants the 2020 United States
3 census to ask people whether or not they are
4 citizens.

5 In continues, in another era this would
6 be common sense. And common sense is in all
7 capital letters.

8 Do you see that?

9 A I do see that.

10 Q And you said you were never made aware of
11 this campaign email; is that correct?

12 A No. I said I had not seen this email.

13 Q You had not seen this particular chain?

14 A I had not seen this chain or the
15 substance of this -- whatever it is.

16 Q Prior to today?

17 Okay. So no one -- so this was looking
18 at 2643 --

19 A Okay.

20 Q -- this image, this stamp of the campaign
21 email was sent to Kevin Manning. Who is
22 Kevin Manning?

1 A Kevin Manning works in our office of --
2 Office of Public Affairs.

3 Q Okay. And Kevin Manning has forwarded
4 this email to James Rockas; is that correct?

5 A Correct. Well, yes. Based on the email
6 chain, correct.

7 Q And I believe we've already established
8 who James Rockas is, but perhaps, again, just
9 remind us.

10 A Well, as his title at the bottom says,
11 press secretary, deputy director public affairs.

12 Q Okay. So were you ever made aware of
13 this email by either Mr. Manning or Mr. Rockas?

14 A Mr. Rockas mentioned to me there had been
15 a campaign email, yes.

16 Q Okay. And did you ever -- did anyone
17 else make you aware of this email?

18 A I think James Uthmeier or Peter Davidson
19 may have mentioned it. We were all surprised to
20 see this email.

21 Q Okay. When were you made aware of the
22 email?

1 A Shortly after Mr. Rockas received a copy.

2 Q Okay. And why were you made aware of
3 this particular email?

4 A Well, as you notice, the email is from
5 somebody at Federal Computer Week who apparently
6 got a copy of this and sent it to us to ask for
7 comment, does Commerce have any response to this,
8 and this was, to my knowledge, the first we'd ever
9 seen it.

10 Q You said you were surprised or everyone
11 was surprised to have seen or made aware of this
12 campaign email. Can you describe for me why you
13 were surprised?

14 A Because we've never spoken to the
15 campaign about the Secretary's thinking or
16 decision, so -- I'm not sure what the date of this
17 is, but, 3/19.

18 Q After you all were made aware of this
19 email, did you discuss the campaign email with
20 anyone else inside the Department of Commerce?

21 A No.

22 Q Did you discuss this email with anyone at

1 the White House?

2 A No.

3 Q Did you discuss this email with anyone at
4 Trump campaign?

5 A No.

6 Q Did you discuss this email with anyone at
7 the Department of Justice?

8 A No.

9 Q Did you discuss this email with anyone at
10 the Census Bureau?

11 A No.

12 Q The flyer also refers to -- and this is
13 on 2644 -- "19 attorney generals who said they
14 will fight Trump if the President dares to ask
15 people if they are citizens."

16 Do you know who those 19 attorney
17 generals are?

18 A I have no idea.

19 Q And do you know what, quote, unquote, era
20 this campaign email is referring to when he says
21 in another era?

22 A I have no knowledge, other than reading

1 this email now what the campaign was thinking
2 about.

3 Q Okay. Do you agree with the sentiments
4 in this campaign email?

5 A Do I agree that asking citizenship -- a
6 citizenship question makes sense? Is that your
7 question?

8 Q If that's what you understand the
9 sentiment of this email to be? What do you
10 understand the sentiment of this email to be?

11 A I said I worked on the Secretary's
12 decision to do this, and I am comfortable with the
13 Secretary's decision.

14 Q So this was a request for media comment,
15 and you stated earlier that after you all were
16 made aware of this email and you all expressed
17 your surprise that the email existed, you didn't
18 discuss it any further?

19 A I mean, I'm not sure what our final
20 response to press was, but I think we had no
21 comment.

22 Q Who would know what the final response to

1 the press was?

2 MR. GARDNER: Objection. Lack of
3 foundation.

4 THE WITNESS: Well, I'd say if it's
5 not on -- if it's not published on our website and
6 it's not quoted in media paper anywhere, then it
7 appears we did not respond.

8 BY MS. SENTENO:

9 Q Would this be something that would be
10 raised to Secretary Ross directly?

11 MR GARDNER: Objection. Lack of
12 foundation. Calls for speculation.

13 THE WITNESS: Certainly the answer would
14 be that the Secretary would probably be made aware
15 that the press were inquiring on this, yes.

16 BY MS. SENTENO:

17 Q Would he be made aware of the fact that
18 this email existed?

19 A Sure. I mean, he would be made aware of
20 the fact we had received an inquiry from the press
21 with the following email on it.

22 Q Do you know if Secretary Ross saw this

1 campaign email?

2 A I can't say for certain.

3 Q Do you know of anyone else at
4 Department of Commerce or the Census Bureau that
5 discussed this campaign email?

6 A Well, James Rockas, I image, would have
7 presented to it the Secretary and asked him if he
8 had a response or further we'd make no response.

9 Q So would the best person to ask about the
10 Secretary's knowledge about this particular email
11 be the Secretary?

12 A That would be the person that could
13 probably best answer your question, yes.

14 Q Do you know if anyone in Department of
15 Commerce or the Census Bureau discussed this email
16 with the White House?

17 A Again, I don't know. You'd have to ask
18 James Rockas. But absent something else in the
19 administrative record that shows that there was
20 correspondence with the White House, I think we'd
21 probably just ignored this.

22 Q And so do you know of anyone at the

1 Department of Commerce or the Census Bureau who
2 discussed this with the Trump campaign?

3 A I don't, no.

4 Q And what was your understanding when you
5 were made aware of this email of the President's
6 rationale for needing a citizenship question on
7 the decennial census?

8 MR. GARDNER: Objection. Calls for
9 speculation. Lack of foundation.

10 THE WITNESS: I have no knowledge of the
11 President's interest or rationale on this
12 question.

13 BY MS. SENTENO:

14 Q What was your understanding of President
15 Trump's directive to the Department of Commerce
16 based on this email?

17 MR. GARDNER: Objection. Calls for
18 speculation. Lack of foundation.

19 THE WITNESS: And to my knowledge,
20 President Trump never gave any directive to the
21 Department of Commerce.

22 BY MS. SENTENO:

1 Q And what was your understanding, sorry,
2 of the President's role in the determination of
3 whether or not to add a citizenship question to
4 the decennial census form?

5 A My understanding was the President had no
6 role.

7 Q Did you ever discuss -- did you ever
8 discuss with anyone in the White House other
9 topics outside of the census, such as immigration
10 enforcement?

11 A I did not, no.

12 Q Have you ever discussed immigration
13 enforcement with President Trump, the issue of
14 voter fraud?

15 A No.

16 Q Have you ever discussed with him the
17 issue of an undercount as a result of the
18 citizenship question?

19 A No.

20 Q How about Congress apportionment?

21 A No.

22 Q How about redistricting?

1 A No.

2 Q Section 2 of the VRA?

3 A No.

4 Q Okay. Did you ever have a conversation
5 with Reince Priebus?

6 A No.

7 Q Are you aware of anyone in the Department
8 of Commerce or the Census Bureau that had a
9 conversation with Mr. Priebus?

10 A Regarding?

11 Q Regarding the census.

12 A I'm not aware of any specific
13 conversation regarding the census, no.

14 Q Are you aware of anyone at the
15 Department of Commerce or the Census Bureau that
16 had a conversation with Mr. Priebus about
17 immigration enforcement?

18 A Not that I'm aware of.

19 Q About voter fraud?

20 A Not that I'm aware of.

21 Q About an undercount as a result of a
22 citizenship question?

1 A Not that I'm aware of.

2 Q About Congress apportionment?

3 A Not that I'm aware of.

4 Q About redistricting?

5 A Not that I'm aware of.

6 Q About Section 2 of the VRA?

7 A Not that I'm aware of.

8 Q Did you ever have a conversation with
9 White House Chief of Staff John Kelly about the
10 census?

11 A No.

12 Q Are you aware of anyone else at the
13 Department of Commerce or the Census Bureau that
14 had a conversation with Chief of Staff John Kelly
15 about the census?

16 A No.

17 Q About immigration enforcement?

18 A No.

19 Q About voter fraud?

20 A No.

21 Q About an undercount as a result of a
22 potential citizenship question?

1 A No.

2 Q About Congressional apportionment?

3 A No.

4 Q Redistricting?

5 A No.

6 Q Or about Section 2 of the VRA?

7 A No.

8 Q Did you ever have a conversation with
9 Arthur Gary regarding the addition of the
10 citizenship question to the decennial census form?

11 A No.

12 Q Are you aware of anyone else at the
13 Department of Commerce or the Census Bureau that
14 had conversations with Mr. Gary?

15 A I believe Peter Davidson may have.

16 Q And are you familiar with who Mr. Gary
17 is?

18 A I believe he's the person that wrote the
19 letter.

20 Q When did you learn about your -- about
21 the conversations between Mr. Davidson and
22 Mr. Gary?

1 A I believe I would have heard -- to the
2 extent they occurred, I likely would have heard
3 about it when he was telling -- informing the
4 Secretary he spoke with Mr. Gary.

5 Q A general time frame?

6 A I couldn't tell you.

7 Q Would it have been before the
8 December 2017 letter?

9 A I don't -- I don't recall.

10 Q Would it have been after the
11 December 2017 letter?

12 A Possibly. Because I know there were
13 discussions about trying to get a meeting between
14 the Census Bureau and the DOJ, and DOJ was not
15 interested in that letter.

16 Q So you're not aware of anyone other than,
17 potentially, Mr. Davidson that had a conversation
18 with Mr. Gary prior to his letter to the
19 Census Bureau?

20 A No.

21 Q Do you know if the conversations between
22 Mr. Davidson and Mr. Gary took place in person or

1 by phone?

2 A Again, I -- there may have been
3 conversations between Mr. Davidson and Mr. Gary.
4 I'm not certain that there were.

5 Q Who would know that there were?

6 A Mr. Gary.

7 Q And what was your understanding of what
8 the conversations between Mr. Davidson and
9 Mr. Gary were about?

10 A Again, I'm not certain that conversations
11 occurred. If they occurred, as I said, my
12 recollection would be it came up in the context of
13 trying to get the meeting that Census Bureau was
14 asking.

15 Q And did those meetings ever occur?

16 A Not to my knowledge.

17 Q Do you know why?

18 A I don't know why. The Justice Department
19 did not want to do the meetings.

20 Q When you say the department -- I'm sorry
21 could you repeat?

22 A I said I do not know why the

1 Justice Department was unavailable for those
2 meetings.

3 Q Was there ever any follow-up to inquire
4 why Department of Justice was not available for
5 meetings with the Census Bureau?

6 A As I said, that's why I believe
7 Peter Davidson may have spoken with Mr. Gary.

8 Q Have ever you discussed with Mr. Gary the
9 issue of immigration enforcement?

10 A No.

11 Q Have you ever -- has -- have you or
12 anyone else in the Department of Commerce
13 discussed with Mr. Gary the issue of voter fraud?

14 A No.

15 Q The issue of an undercount as a result of
16 the citizenship question?

17 A Again, not to my knowledge.

18 Q The issue of Congressional apportionment?

19 A Again, not to my knowledge.

20 Q Issue of redistricting?

21 A Not to my knowledge.

22 Q Section 2 of the VAR?

1 A Again, that's the section that they would
2 need the information for, so I think any
3 conversation with the Justice Department -- to the
4 extent it reached the Voting Rights Act, would
5 have been referring to Section 2.

6 Q Forgive me if you answered this question
7 earlier, but did you -- did you yourself ever have
8 a conversation with the Attorney General -- with
9 Attorney General Jeff Sessions -- sorry --
10 regarding the addition of a citizenship question
11 to the decennial census?

12 A I personally did not speak to him
13 directly about that matter.

14 Q Did you speak to him through other
15 individuals?

16 A No.

17 Q Have you -- did you say that you -- is it
18 my understanding from your testimony that you
19 didn't speak directly to the Attorney General
20 about the citizenship question?

21 A I've never spoken directly to the
22 Attorney General about the citizenship question.

1 Q Okay. Have you ever spoken with the
2 Attorney General about immigration enforcement?

3 A No.

4 Q About voter fraud?

5 A No.

6 Q About an undercount as a result of the
7 citizenship question?

8 A No.

9 Q About Congressional apportionment?

10 A No.

11 Q About redistricting?

12 A No.

13 Q About Section 2 of the VRA?

14 A No.

15 Q Okay. Are you aware of anyone in the
16 Department of Commerce who has had direct
17 conversation with the Attorney General,
18 notwithstanding Secretary Ross?

19 A Other than Secretary Ross, I'm not sure
20 that anybody has spoken directly with the Attorney
21 General.

22 Q Okay. Are you aware of the

1 Attorney General's views on asking a citizenship
2 question on the decennial census?

3 A I'm not aware of the Attorney General's
4 view -- Attorney General's views.

5 Q On?

6 A On a citizenship question on the census.

7 Q Are you aware of his views on immigration
8 enforcement?

9 A Other than what you read in the press,
10 no.

11 Q Are you aware of his views on the program
12 called Deferred Action For Childhood Arrivals?

13 A Again, other than what's in the press, I
14 don't know anything about what his views are.

15 Q So the views that you do know of the
16 Attorney General, you learned through the media?

17 A Media reports, yes.

18 Q And approximately when are you learning
19 those? When did you begin reading media reports
20 about the Attorney General's specific viewpoints?

21 A I stay abreast in most papers, so the
22 Washington Post, the Wall Street Journal. I have

1 a general knowledge of the issue, but no specific
2 interests. The Department of Commerce doesn't do
3 immigration enforcement, so --

4 Q Did you believe at the time of the DOJ
5 letter to the Census Bureau that the
6 Attorney General was committed to the enforcement
7 of the Voting Rights Act but that his hindrance or
8 the hindrance of the DOJ was the availability of
9 data?

10 MR. GARDNER: I'm sorry. Can you repeat
11 that question?

12 MS. SENTENO: Yeah.

13 BY MS. SENTENO:

14 Q Did you believe at the time of the DOJ
15 letter, that the Attorney General was committed to
16 the enforcement of the Voting Rights Act but that
17 what was holding them up was -- were data issues?

18 A Their letter communicated that they could
19 use census block-level data, which they currently
20 don't get for that, and if, therefore, we would
21 add a question to the decennial census that would
22 provide that data.

1 Q Have you ever had a conversation with
2 Stephen Miller regarding the addition of the
3 citizenship question to decennial census?

4 A No.

5 Q Do you know who Stephen Miller is?

6 A I do know who Stephen Miller is.

7 Q Could you tell us who that is?

8 A He's a policy advisor to the President.

9 Q And have you ever asked -- have you ever
10 had a discussion with Mr. Miller about immigration
11 enforcement, voter fraud, and undercount as a
12 result of the citizenship question, Congressional
13 apportionment, redistricting or Section 2 of the
14 VRA?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No. I have not.

17 BY MS. SENTENO:

18 Q Are you aware of anyone at the
19 Department of Commerce who has had conversations
20 with Mr. Miller about those topics?

21 A No.

22 Q Are you aware of Mr. Miller's views on

1 immigration?

2 A Not specifically, no.

3 Q The census?

4 A Not specifically, no.

5 Q On apportionment?

6 A Not specifically, no.

7 Q On Deferred Action for Childhood
8 Arrivals?

9 A Not specifically, no.

10 Q Have you ever had a conversation with
11 Alabama Attorney General Steve Marshall regarding
12 the addition of a citizenship question to the
13 decennial census form or about the census
14 generally?

15 A No.

16 Q Do you know of anyone at the
17 Department of Commerce or the Census Bureau who
18 has had a conversation with Attorney General
19 Steve Marshall?

20 A Are they --

21 Q Alabama. Sorry.

22 A Are they the ones bringing the lawsuit

1 against us?

2 Q Yes.

3 A No. I don't think so.

4 Q And you've never -- have you ever had a
5 conversation with Mr. Marshal about voter fraud,
6 undercount as a result of the citizenship
7 question, Congressional apportionment,
8 redistricting or Section 2 of the VRA?

9 A I've never spoken to Mr. Marshall.

10 Q Are you aware of anyone at the Department
11 of Commerce who has?

12 A Not that I know of.

13 Q Have you ever had a conversation with
14 Alabama Congress member Mo Brooks?

15 A No.

16 Well, I take that back. Unless he's been
17 on some panel that's -- that I testified in front
18 of. It's entirely possible, in that case, I would
19 have had a conversation with him.

20 Q Okay. So you've never had a conversation
21 with him outside of a potential panel about
22 anything generally or just about the census or the

1 citizenship question?

2 A I feel fairly confident I have not spoken
3 with Mr. Brooks about any subject matter.

4 Q Are you aware of anyone at the
5 Department of Commerce or Census Bureau who has --

6 A Again, no.

7 Q -- had a conversation?

8 A No.

9 Q Okay. Outside of the Department of
10 Commerce and the Census Bureau and individuals
11 that I just ran through, have you or anyone else
12 at the Department of Commerce spoken to anyone
13 outside of your agency prior to the DOJ letter
14 about the citizenship question?

15 MR. GARDNER: Objection. Lack of
16 foundation.

17 THE WITNESS: Again, I can only answer
18 for myself. So I wouldn't know what other people
19 might or might not have spoken to people outside
20 the department on.

21 BY MS. SENTENO:

22 Q Did you ever speak to anyone from the

1 Heritage Foundation?

2 A No.

3 Q You never spoke to anyone at the
4 Heritage Foundation about the census?

5 A Not that I recall.

6 Q And you never spoke to anyone at the
7 Heritage Foundation about the potential -- about
8 apportionment?

9 A Not that I recall, no.

10 Q How about voter fraud?

11 A No.

12 Q Congressional apportionment -- sorry. I
13 just said that.

14 Section 2 of the VRA?

15 A No.

16 Q Okay. Are you aware of anyone else at
17 the Department of Commerce or the Census Bureau
18 that at any point, either before or after the DOJ
19 letter -- the DOJ letter, who had a conversation
20 with someone we had not already discussed about
21 the purpose of adding a citizenship question for
22 immigration enforcement?

1 MR. GARDNER: Objection. Form.

2 THE WITNESS: I'm not aware of any
3 conversations regarding adding a citizenship
4 question for immigration enforcement.

5 BY MS. SENTENO:

6 Q How about voter fraud?

7 A No.

8 Q Congressional apportionment?

9 A No.

10 Q Redistricting?

11 A No.

12 I mean, I will note there was an earlier
13 conversation about that Wall Street Journal
14 article that mentioned -- that referenced
15 apportionment. So outside of that response with
16 the Secretary, there's never been a discussion of
17 it.

18 Q Have you spoken to anyone at
19 Department of Justice's voting rights section?

20 A Not to my knowledge.

21 Q So you were never referred to anyone or
22 you never inquired from anyone, a contact within

1 the voting rights section, to discuss this
2 request --

3 MR. GARDNER: Objection. Form.

4 BY MS. SENTENO:

5 Q -- for a citizenship question?

6 MR. GARDNER: Sorry. Objection to form.

7 THE WITNESS: No. Again, as I think we
8 established in the earlier testimony, I was
9 referred to Mary Blanche Hankey by someone in the
10 Department of Commerce, by Eric Branstad, who I
11 think got her name from a contract of his at the
12 White House. She referred me to -- I'm already
13 blanking on his name -- John McHenry. I did not
14 investigate John McHenry's position in the
15 department. I just took it on face value he would
16 be the right person to talk to and those are the
17 two people I spoke to at Department of Justice,
18 so -- outside of litigation counsel, obviously.

19 BY MS. SENTENO:

20 Q You testified earlier in the memo that
21 you drafted for the Secretary that stated that
22 once you had been told by DHS that your request

1 would be more appropriately handled by the
2 Department of Justice, you said that the
3 interaction ceased; is that correct?

4 A Well --

5 Q From you?

6 A My efforts at that point to track down
7 somebody ceased because they had run into a dead
8 end. I mean, our initial conclusion was that
9 Department of Justice was the right place to go.
10 They seemed occupied on other matters, so they
11 referred us to DHS. DHS referred us back, so now
12 I'm back to where I started.

13 Q So once you were referred back to DOJ,
14 you didn't ask another follow-up as to who in the
15 voting section would be more appropriate to talk
16 about this particular issue?

17 A Again, I was working on literally dozens
18 of issues that consumed a lot of time. And so I
19 had put the time into it that I could afford to
20 put into it and had come up empty. So I reported
21 that to my boss, and basically, said if absent
22 some instruction from higher up, it appears that

1 the DOJ staff is not particularly interested in
2 expending resources on this right now.

3 Q Did you or Secretary Ross consider having
4 anyone else, any other governmental department or
5 any other jurisdiction make a request to the
6 Census Bureau to add a citizenship question --

7 MR. GARDNER: Objection.

8 BY MS. SENTENO:

9 Q -- other than the DOJ and DHS?

10 MR. GARDNER: Objection. Form. And
11 objection. Foundation.

12 THE WITNESS: Again, nobody would make a
13 request to the Census Bureau to add it because the
14 statute commits that discretion to the Secretary,
15 not the Census Bureau. So it's not their decision
16 to make. It's the Secretary's decision to make.
17 So we would not seek someone else to contact the
18 Census Bureau about the question, no.

19 BY MS. SENTENO:

20 Q But the DOJ letter was directed to the
21 Census Bureau requesting an addition of the
22 question?

1 A I did not draft that letter, so I -- but
2 their choice of who to send the request to was
3 dictated by the Department of Justice, not by us.

4 Q Did you or Secretary Ross consider having
5 anyone else make -- anyone else, other than the
6 DOJ to DHS, to make that request to Commerce?

7 MR. GARDNER: Objection. Lack of
8 foundation.

9 THE WITNESS: No. I think upon further
10 analysis, we determined that the Secretary
11 probably could determine that Commerce had a need
12 for it, but that was not before us at the time,
13 so --

14 BY MS. SENTENO:

15 Q Can you explain your subsequent research?

16 A Well, as I mentioned, the United Nations
17 recommends that all countries ask, frankly, rather
18 detailed questions about citizenship,
19 naturalization, et cetera. So it's considered
20 good practice, good demographic information to
21 have. It was asked for 150-plus years without any
22 problem. So -- and every other major democracy

1 inquires of all their citizens on a regular basis
2 of it. So it's -- I think there's a perception
3 out there -- where it came from, I don't know --
4 that somehow asking a citizenship question is a
5 problem.

6 And I would, again, refer you back to the
7 fact that 70 percent of the noncitizens in the ACS
8 actually answer the question correctly. So,
9 apparently, those people don't consider it a
10 problem. So it appears to be a rather small
11 demographic that is concerned about this. And
12 again, I would point out that when you understand
13 that the data that is being protected by law,
14 cannot be used for any enforcement purpose, cannot
15 be used to identify an individual, there's
16 absolutely no reason I can think of why someone
17 would not answer the census honestly on that,
18 citizen or noncitizen. It's demographic
19 information.

20 Q So based on that, was it your
21 understanding that if the DOJ did not make this
22 request to the Department of Commerce or the

1 Census Bureau, whoever was the most appropriate
2 point of contact for that request, was it your
3 understanding that the Department of Commerce
4 might move forward with a plan to add the
5 citizenship question based on --

6 MR. GARDNER: Objection.

7 BY MS. SENTENO:

8 Q -- that rationale?

9 MR. GARDNER: Sorry. Objection.
10 Hypothetical.

11 THE WITNESS: Right. It's a hypothetical
12 question that was not before us.

13 BY MS. SENTENO:

14 Q Okay. Did Secretary Ross tell you or
15 anyone else whether he would have pursued other
16 justifications for adding the citizenship
17 question?

18 MR. GARDNER: Objection.

19 THE WITNESS: We had a request --

20 MR. GARDNER: Lack of foundation.

21 THE WITNESS: -- from the

22 Justice Department, so there was no need to

1 speculate on that.

2 BY MS. SENTENO:

3 Q Okay. Are you aware of any VRA cases
4 that the Department of Justice declined to bring,
5 only because they needed block-level citizenship
6 data?

7 A I'm not aware of that, but I didn't
8 research that either.

9 Q So no -- neither yourself or anyone else
10 at the Department of Commerce asked DOJ for this
11 information?

12 A I did not. I can't say whether anybody
13 else did.

14 Q So -- just a couple more questions.
15 The ACS is not a head count, correct?

16 A That's right. It's a sample.

17 Q But the decennial census is a head count,
18 correct?

19 A That's correct. Counts all persons.

20 Q And a decrease in the response rate in
21 the citizen question on the 2016 ACS caused an
22 underestimate of the percent of noncitizens; is

1 that correct?

2 A No. That's not correct.

3 Q Can you explain?

4 A Well, you're asserting that it's because
5 of the citizenship question, and I'm not sure that
6 the data supports that statement.

7 Q What are you -- what do you believe the
8 data supports?

9 A Again, without the data sitting in front
10 of me, it would be hard to make an analysis. But
11 basically, the Census Bureau has reported that
12 certain number of people may drop off at certain
13 questions. It's not dissimilar for citizenship
14 versus other questions. There was not a major
15 statistical variation. So, yes, a certain percent
16 of people do not complete the 45, 48 or 70
17 questions that are on the ACS or the long form,
18 and they have various break-off rates under the
19 Internet thing to tell where they stopped.

20 But, again, whether citizenship was a
21 determinative factor in any of those cases, it's
22 hard to determine.

1 Q But the data suggests -- the data that
2 the Census Bureau provided suggests that the
3 break-off rate for noncitizens was higher with
4 respect to a citizen question; is that correct?

5 A Higher than noncitizen?

6 Q Yes.

7 A Yes. That's true.

8 Q Okay. So if the same people who did not
9 respond to the citizen question on the ACS also
10 didn't respond to the short form of the decennial
11 census, that would cause a drop in the total head
12 count, correct?

13 A No. It would not.

14 Q Could you explain?

15 A Secretary Ross placed the question at the
16 end of the census so they would be able to not
17 answer that and still complete the census. We
18 also have administrative records and
19 Secretary Ross directed we use administrative
20 records, which we're actively doing for a variety
21 of reasons, not just citizenship.

22 So we have every confidence between the

1 increased outreach that's planned, the additional
2 money and resources that are to be put into the
3 advertising and other things, that we will more
4 than compensate -- in fact, our objection is to
5 have a complete and accurate count above and
6 beyond the count that was done in 2010.

7 Q But every individual is required to
8 answer the census fully and completely, including
9 all questions; is that not right?

10 A That's correct. Yes.

11 Though I would note, we've never
12 prosecuted anybody for failure to do so.

13 MS. SENTENO: Okay. Go off the record.

14 VIDEOGRAPHER: We're going off the
15 record. The time on the record is 5:46 p.m.

16 (Off the record.)

17 VIDEOGRAPHER: We're back on the record.
18 The time on the video is 5:43 p.m.

19 EXAMINATION BY MS. BOUTIN:

20 Q Sir, I'd like to talk about the time
21 period between the December 12th DOJ letter
22 requesting the citizenship question and before

1 Secretary Ross issued the March 26 memo --
2 decision memo.

3 A I'm sorry. Could you tell me who you're
4 with?

5 Q Sure. My name is Gabrielle Boutin. I'm
6 with the Attorney General's of the State of
7 California, and I represent plaintiffs, the
8 State of California -- excuse me -- State of
9 California v. Ross in the Northern District of
10 California.

11 A Okay. Thank you.

12 Q So during the time period between the
13 December 12th DOJ letter and the issuance of
14 Secretary Ross's March 26th memorandum, that's
15 what we're talking about.

16 A I understand.

17 Q Do you understand?

18 A So far so good.

19 Q Good.

20 During that time period, did the
21 Department of Commerce ever inform the
22 Department of Justice that the Census Bureau

1 recommended using administrative records alone to
2 meet Justice's December 12th request rather than
3 adding the citizenship question to the census?

4 A I believe that was part of the purposes
5 of the meeting they were seeking with the -- the
6 Census Bureau was seeking with the
7 Justice Department.

8 Q Okay. My question is: Did the
9 Commerce Department ever inform DOJ that the
10 Census Bureau recommended using administrative
11 records alone to meet their requests, rather than
12 adding a citizenship question to the census?

13 A Again, I'm not privy to all the
14 conversations with the Justice Department, so --

15 Q Do you --

16 A -- I was not --

17 Q -- know --

18 A I was not involved in such a discussion,
19 no.

20 Q Okay. But you were one of the primary
21 people working on this at Commerce; isn't that
22 right?

1 A Yes.

2 Q Do you think you would have known if
3 someone from Commerce conveyed that information to
4 the Department of Justice?

5 MR. GARDNER: Objection. Calls for
6 speculation.

7 BY MS. BOUTIN:

8 Q Do you think it's likely you would have
9 known?

10 A It's possible, yes.

11 Q Did the Department of Commerce ever
12 transmit to the Department of Justice any of the
13 Census Bureau memos analyzing options for
14 providing block-level -- excuse me -- block-level
15 citizenship data to the Department of Justice?

16 MR. GARDNER: Objection. Lack of
17 foundation.

18 BY MS. BOUTIN:

19 Q That was repetitive. Let me rephrase.

20 A All right.

21 Q Did Commerce ever transmit to
22 Department of Justice any of the Census Bureau's

1 memos that analyzed the options for providing to
2 DOJ block-level citizenship data?

3 MR. GARDNER: Objection. Lack of
4 foundation.

5 THE WITNESS: I would just note it's the
6 Secretary of Commerce's decision as to whether
7 this goes forward. His focus is on a complete and
8 accurate count.

9 And as explained earlier, the Option C
10 alternative, which was to use the administrative
11 records only, would have inquired us to impute --
12 so, in other words, fill in the blanks -- for 25
13 million voting age citizens. That was not
14 something Secretary Ross was prepared to have the
15 department do.

16 BY MS. BOUTIN:

17 Q Mr. Comstock, I understand that. Your
18 counsel is -- wants us to limit the amount or time
19 that we're here today, and the best way to do that
20 is if you would answer my questions directly. So
21 I'll ask you again.

22 Did the Department of Justice ever --

1 A Not to my knowledge.

2 Q Okay. Thank you.

3 And again, we're talking about between
4 December 12th and the March 26th.

5 A Right.

6 Q Did the Department of Commerce ever
7 inform DOJ that the Census Bureau believed that
8 administrative records alone would be more
9 complete -- would create more complete and
10 accurate citizenship data than asking a
11 citizenship question on the census and then
12 combining the data from that question with
13 administrative records?

14 MR. GARDNER: Objection. Form.
15 Objection. Lack of foundation.

16 BY MS. BOUTIN:

17 Q Do you want me to re-ask that question?

18 A Sure.

19 Q Did the Department of Commerce ever
20 inform Justice that the Census Bureau believes
21 that admin -- using administrative records alone
22 would provide more complete and accurate data than

1 instead of doing that asking the citizenship
2 question on the census and then combining that
3 with the use of administrative records?

4 MR. GARDNER: Same objection.

5 THE WITNESS: Again, I think you
6 mischaracterize the Census Department's -- Census
7 Bureau's analysis. But, again, it's the
8 Secretary of Commerce's decision as to what to
9 make, and so he would only transmit to the
10 Justice Department what he considered that would
11 provide complete and accurate data.

12 BY MS. BOUTIN:

13 Q But the Commerce Department did inform
14 the Department of Justice about that belief by the
15 Census Bureau?

16 MR. GARDNER: Same objections.

17 THE WITNESS: Again, not to my knowledge.

18 BY MS. BOUTIN:

19 Q Okay. But did the Commerce Department
20 ever inform Justice that the Census Bureau
21 believed that 30 percent of responses by
22 noncitizens as to citizen status are incorrect?

1 MR. GARDNER: Objection. Lacks
2 foundation.

3 THE WITNESS: Again, I believe we have
4 told the Justice Department that is now the case
5 with the ACS data, yes.

6 BY MS. BOUTIN:

7 Q And was that conveyed between
8 December 12th and March 26?

9 A I don't know.

10 Q Did Commerce ever communicate to Justice
11 any of the substance of the Census Bureau's
12 technical review of the -- of the
13 Justice Department's request for a citizen
14 question?

15 MR. GARDNER: Same objection.

16 THE WITNESS: Again, the Justice
17 Department asked us to provide block-level --
18 block-level census data. How we do that is a
19 decision of Department of Commerce, not the
20 Department of Justice.

21 BY MS. BOUTIN:

22 Q But is the answer to that question yes or

1 no?

2 A I forget the question.

3 Q Okay. I have to, so I'll say it again.

4 Did Commerce ever communicate to DOJ any
5 of the substance of the Census Bureau's technical
6 review to have DOJ's request for a citizenship
7 question?

8 MR. GARDNER: Same objection.

9 THE WITNESS: Again, it's -- the
10 technical review was how do we provide data that
11 would respond to this, and that would not be
12 relevant -- why would we communicate that to the
13 Justice Department is not --

14 BY MS. BOUTIN:

15 Q Well, isn't -- didn't the
16 Justice Department, isn't that ultimately the
17 goal, according to that letter, getting
18 block-level data for Voting Rights Act
19 enforcement?

20 A Correct. But they --

21 Q Hold on. Hold on. And isn't -- don't
22 you think they would want the most accurate data

1 of which to do that?

2 A And that's a determination of the
3 Secretary, not the Justice Department, so --

4 Q But you don't think the
5 Justice Department would want to know the
6 Census Bureau's opinion on what would be best way
7 to do that?

8 MR. GARDNER: Objection. Calls for
9 speculation.

10 THE WITNESS: I don't think it would be
11 relevant if I'm the Justice Department, at all.

12 BY MS. SENTENO:

13 Q Okay. I'd like to turn to the March 26th
14 memo.

15 Was that Exhibit 30?

16 MR. GARDNER: No. I think --

17 THE WITNESS: I think it is. Yes.

18 BY MS. BOUTIN:

19 Q Okay. So I'd like to turn to Page 5,
20 which is Bates number 1317.

21 A Okay.

22 Q And I'd like to avoid having to read a

1 full paragraph, but I also want you to understand
2 the context, so let's start at the top of the
3 first paragraph.

4 A Okay.

5 Q It says, "In my judgment that Option D
6 will product DOJ with the most complete and
7 accurate CVAP" -- excuse me. Let me start again.

8 "It is my judgment that Option D will
9 provide DOJ with the most complete and accurate
10 CVAP data in response to its request."

11 The paragraph then goes on to give a few
12 reasons why Option D would be the best option in
13 his opinion and then about in the middle of the
14 paragraph, it gives one final reason starting with
15 the word "finally," so I'm going to read that
16 portion.

17 A Okay.

18 Q It says, "Finally placing the question on
19 the decennial census and directing the
20 Census Bureau to determine the best means to
21 compare the decennial census responses with
22 administrative records will permit the

1 Census Bureau to determine the inaccurate response
2 rate for citizens and noncitizens alike using the
3 entire population. This will enable the
4 Census Bureau to establish, to the best of its
5 ability, the accurate ratio of citizen to
6 noncitizen responses to impute for that small
7 percentage of cases where it is necessary to do
8 so."

9 A Yes.

10 Q So with respect to those two sentences
11 starting with the word finally, who wrote that
12 language?

13 A I couldn't say for certain, but I likely
14 had a hand in drafting that.

15 Q Okay. Can you explain, how does adding a
16 citizenship question to the census and determining
17 the incorrect response rate for citizens and
18 noncitizens help the Census Bureau impute with
19 respect to people who did not respond at all and
20 did not have administrative records?

21 A I mean, you could ask the Census Bureau
22 for a fuller explanation of imputation, but

1 basically, they do a formula that looks at data
2 that they have. And so if they know for the
3 people -- let's say 95 percent of the population
4 that they have accurate records for and which they
5 have responses for, if they discover that -- pick
6 a number -- it's now 10 percent of the people who
7 aren't citizens, are, in fact, noncitizens, then
8 they would probably apply that to 5 percent
9 remaining. So they would take whatever number of
10 people who are citizens, multiply that by that 5
11 percent, and then they would take the noncitizens
12 and say, okay, we now know the accurate count,
13 based on the entire population of what we have,
14 there's a 10 percent error rate, 10 percent of the
15 people that might say they're citizens are
16 noncitizens, so we're going to multiply that
17 number out. That's going to give you the most
18 accurate count that you can get.

19 Q So what's your source of that
20 explanation?

21 A Based on the briefings.

22 Q So you're saying that the Census Bureau

1 supports this statement here?

2 A This is the Secretary's statement.

3 Whether the --

4 Q But did the Census Bureau explain,
5 say -- explanation you just offered me -- did
6 they -- did they explain it that way to you?

7 A More or less, yeah.

8 Q And do you believe they support this
9 statement in this memo?

10 A I'm going to make no representations
11 about what the Census Bureau would or would not
12 support.

13 Q Would it surprise you if you learned that
14 they did not support that statement, that they did
15 not ever represent to you or the Secretary that
16 establishing that ratio would help impute for
17 nonresponders?

18 A I would not be surprised if that was the
19 opinion of Dr. Abowd, no.

20 Q Do you believe that Dr. Abowd wrote this
21 memos on his own?

22 A I believe he had the help of lots of

1 staff. I have no --

2 Q Do you believe he acted against the
3 opinions of his staff when he wrote the memos?

4 A I have no idea.

5 Q So -- but you believe that it was his
6 opinion alone that contributed to -- that was
7 reflected in those memos?

8 A No. Dr. Abowd is the head of the
9 division that does that, so at the end of the day,
10 he gets the final call, so --

11 And, again, just to be clear, do I think
12 that there may be other opinions in the
13 Census Bureau? Absolutely.

14 Q So do you have any source, other than the
15 Census Bureau, for believing in the scientific
16 empirical accuracy of these last two sentences of
17 this paragraph?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Yes. My experience, my
20 knowledge and other people who also, including the
21 Secretary, who is a very smart man, who also came
22 to a similar conclusion.

1 BY MS. BOUTIN:

2 Q Do you believe you have more expertise in
3 the science of imputation than the experts at the
4 Census Bureau?

5 A I'm not going to get caught in making
6 such a statement, but I'm perfectly capable of
7 looking at the analysis they provided and deciding
8 whether or not I agreed with that analysis.

9 Q What's your background in statistical
10 imputation?

11 A I --

12 (Conference call interruption.)

13 BY MS. BOUTIN:

14 Q What is your background in statistical
15 imputation?

16 A I don't have one.

17 Q Okay. Switching gears. Did you ever ask
18 anyone at the Census Bureau whether placing the
19 citizenship question on the census could affect
20 the apportionment of the Congressional
21 representatives to the state?

22 A I never asked that question.

1 Q Are you aware of whether anyone else at
2 Commerce ever asked that question to the
3 Census Bureau?

4 A Not to my knowledge.

5 Q Okay.

6 MS. BOUTIN: I believe that's all I have.

7 MS. GOLDSTEIN: Let's go off the record.

8 MS. BOUTIN: Yeah. Let's go off the
9 record.

10 VIDEOGRAPHER: We're going off the
11 record. The time on the video is 5:56 p.m.

12 (Off the record.)

13 VIDEOGRAPHER: We're back on the record.
14 The time on the video is 6:02 p.m.

15 MS. BOUTIN: We have completed our
16 questions for today. However, based on the fact
17 that there are still outstanding discovery
18 responses and discovery documents, we are keeping
19 the deposition open at this time.

20 MR. GARDNER: We oppose that, of course.
21 You had the option to put this off, if you wanted
22 to, knowing there were outstanding issues and

1 chose to go forward anyway, but we don't have to
2 resolve this here and now.

3 The witness will read and sign.

4 VIDEOGRAPHER: This concludes today's
5 video deposition. The time on the video is
6 6:02 p.m. We are off the record.

7 (Whereupon, at 6:04 p.m., the deposition
8 of EARL COMSTOCK was concluded.)
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* * * * *

CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KAREN LYNN JORGENSEN, RPR, CCR, CSR

Dated this 3rd day
of September , 2018.

ACKNOWLEDGEMENT OF DEPONENT

I, EARL COMSTOCK, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me.

Date

EARL COMSTOCK

Joshua E. Gardner, Esquire

U.S. DEPARTMENT OF JUSTICE

20 Massachusetts Avenue

Washington, D.C. 20530

IN RE: New York Immigration Coalition, et al., v.
United States Department of Commerce, et al.

1 Dear Mr. Gardner:

2 Enclosed please find your copy of the
3 deposition of EARL COMSTOCK, along with the
4 original signature page. As agreed, you will be
5 responsible for contacting the witness regarding
6 signature.

7 Within 21 days of receipt of transcript,
8 please forward errata sheet and original signed
9 signature page to counsel for, John Freedman and
10 all counsel of record.

11 If you have any questions, please do not
12 hesitate to call. Thank you.

13 Yours,



14 Karen Lynn Jorgenson, RPR, CCR, CSR
Capital Reporting Company
15 1821 Jefferson Place, Northwest
3rd Floor
16 Washington, D.C. 20006
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17
18 cc: All counsel of record
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E R R A T A S H E E T

Case Name: New York Immigration Coalition, et
al., v. United States Department of Commerce, et
al.,

Witness Name: EARL COMSTOCK

Deposition Date: Thursday, August 30, 2018

Page No. Line No. Change/Reason for Change

Signature

Date

[& - 2017]

Page 1

&	11 2:14 147:9,10 158:16 373:11	15.6 361:10	2
& 1:15 4:4,11,20 6:15 8:21 47:1 228:2	114 2:11 115 4:16 11:00 209:1 11:31 158:10 11:45 158:13 12 2:14 158:17,18 158:19 159:1 191:22 293:20 348:17 365:1 120 2:12 123 2:12 125 4:8 1250 3:18 12:10 235:8 12:32 212:1 12th 419:21 420:13 421:2 424:4 426:8 13 2:15 127:8 164:13,14,18 1300 5:18 1317 428:20 1321 93:18 137 2:13 13th 129:19 14 2:15 167:1,2,5,6 206:3 1401 5:12 6:16,20 1410 56:5 1411 219:18 145 2:13 147 2:14 14th 133:15 205:18 15 2:16 91:8,10 182:5,6,7,12,13 218:19 232:15 365:1 373:12	150 413:21 158 2:14 15th 88:1,8,11 16 2:16 189:6,7,10 189:11,18 160 328:11 1620 5:7 164 2:15 167 2:15 169 328:1 16th 5:2 189:16 17 2:17 194:13,15 235:8,15 17388 437:18 439:13 18 2:18 27:17 199:20,21 200:2 212:11 182 2:16 1821 439:15 189 2:16 18th 28:18 29:6,10 31:20 33:3 19 2:18 212:12,13 212:14,17 309:21 388:13,16 194 2:17 199 2:18 1992 12:21,22 19th 317:3,11 319:19 320:19 321:2 1:18 1:5 1:19 212:5 1:49 240:19 1:50 240:22 1:58 250:8	2 2:9 59:6,11 62:2 62:3,6 64:22 71:3 80:9 111:11 146:2 157:3 161:21 294:3,6,10 328:15 349:5 352:10 394:2 395:6 396:6 399:22 400:5 401:13 404:13 406:8 408:14 20 2:19 6:10 91:9 91:11 138:11 171:15 215:18,19 373:13 438:16 200 263:9 2000 81:1 20001 4:5,12 8:22 20005 3:19 5:13 20006 439:16 2000s 67:11 20036 5:3,8 2008 384:4 2010 67:11 78:22 79:4,19 80:4 355:14 419:6 2016 15:16 17:16 27:6 124:4 416:21 2017 15:17 27:17 33:16,17 34:10 35:5,9,17 36:10 37:7 39:18 40:2 55:2 56:21 58:15 59:6,11 64:6,8 67:22 68:4 77:19 78:1 83:2 88:3,9 88:11 96:12 103:4 104:12,22 105:7 109:1,18 110:8 115:14,15 117:10 117:13,16,18
0			
001308 318:4 001314 352:10 001315 358:8 01314 354:10 01570 381:6 05025 1:5			
1			
1 2:9 8:13 55:22 56:1,2 111:7 147:21 222:11 278:8 318:2 322:1 322:12 323:9 365:9,17 375:22 376:8 10 2:13 64:6,8 67:22 68:4 69:8 83:2,16 145:6,7,11 148:11 149:16 192:2 208:1 355:5 365:1 431:6,14,14 100 5:3 257:14 327:18 355:2 363:5 369:1 10005 6:5 1004 4:8 1016 5:2 1050 5:7 10:32 111:7 10:45 111:11 10:51 203:9 10th 65:1 69:3 72:15 81:16,20 82:7,13 83:5,14 89:9 146:13			

[2017 - 31st]

Page 2

119:1,5,8,12 121:16 122:12 124:5 127:8 129:19 133:15 134:13 138:11 140:16,21 143:22 146:2 147:21 156:15 157:3 161:21 162:2 179:10 183:10 184:8 188:4,15 189:18 195:6 196:17 198:21 201:5 206:3 208:1 209:17,19,22 213:3 215:12 222:12 225:7 235:8,15 237:14 238:6 239:2 241:18,22 242:3 250:17,22 262:15 262:19 263:5,11 264:3,12,17 265:8 286:1 290:17 309:9 348:17 397:8,11 2018 1:10 8:5 35:18 39:22 40:1 94:13 111:15 137:11 149:13 198:19 241:16,18 241:20 242:7,9 250:17 287:19 293:7 309:21 318:2 326:6 369:5 375:22 376:8 437:22 440:6 202 4:5,13 5:4,8,13 6:11,17,21 439:16 2020 21:16 85:21 86:10 88:15 93:4	95:20 130:5 202:9 204:2 244:20 333:10,17 334:3 337:2,10 354:16 367:14 385:2 20230 6:17,21 2034 224:14 20530 6:11 438:17 20th 27:20 34:12 35:5,8 143:22 323:15 21 2:19 94:12 111:15 121:16 218:4,6,10 341:9 439:7 210-6053 5:19 212 2:18 4:9 6:5 215 2:19 218 2:19 219 2:20 21st 98:10 99:3 101:19 113:10 341:17,19 346:5 346:12 22 2:20 56:21 219:18,19,22 221 2:20 224 2:21 226 2:21 23 2:20 221:18,19 221:22 232 50:14 201:19 234 2:22 2395 226:16 2396 229:20 24 2:21 203:9 224:15,16,19 229:13 241 2:3 2424 221:18	2458 189:10 2462 167:5 24th 201:5 25 2:21 224:1 226:17,18,21 351:9 368:17 423:12 2521 62:7 78:5 2522 80:9 2561 114:10 26 2:22 137:11 234:19,20 242:9 324:13 326:6 420:1 426:8 2643 384:2 385:18 2644 384:8 388:13 2651 234:19 235:1 26th 241:19 323:10 324:2,6 343:1,20 345:3,14 345:15 346:17,21 352:10 420:14 424:4 428:13 27 2:22 292:21,22 293:1 361:9 373:13 28 3:3 6:4 55:2 309:3,15 314:7 326:11 353:2,5 354:13 2800 4:20 28th 16:7 37:4,7 63:8 104:19 195:6 29 3:3 317:19,20 318:2 321:14 326:12 293 2:22 293-2828 5:4 296-2300 5:8 29th 139:18 142:10	2:14 250:12 2nd 58:15 151:11 151:13 159:11 166:6 183:21 184:3 191:19 239:22 3 3 2:10 82:14,17,20 92:20,22 158:13 165:17 212:1 224:1 328:15 358:8 365:15 366:1,19 3/10 93:13 3/15 93:14 3/19 387:17 30 1:10 3:4 8:5 22:21 27:6 34:10 35:17 36:10 104:9 266:21 307:3 325:22 326:1,5,14 329:18 332:6 353:2,11,22 355:11 357:12 367:6,20 425:21 428:15 440:6 300 327:9,11,16 305-9802 6:11 3071 164:20 309 3:3 30th 33:20 34:2,13 35:5,9 37:6 31 3:5 33:17 372:14,15 373:3 373:19 375:14,15 377:4 379:4,10 380:6,14 317 3:3 31st 16:2,3 33:14 33:15,20 88:17
---	--	---	---

[32 - abowd]

Page 3

32 3:6 374:20 375:2 326 3:4 33 3:7 376:12,13 376:22 336 2:4 34 3:8 353:3,6 354:13 378:17,18 378:22 35 3:9 23:12 369:6 373:7,9 375:10 378:10,10 383:20 383:20,21 350 3:18 360 364:22 366-8500 4:17 3685 82:16 3686 87:12 3694 137:20 3699 158:22 37 293:20 3702 199:19 202:6 3703 200:12 3705 194:14,18 3709 123:14 3710 145:11 372 3:5 374 3:6 376 3:7 378 3:8 381 2:4 383 3:9 3983 218:5 3984 215:17 3:11 308:19 3:37 309:1 3rd 148:8 165:22 437:21 439:15	4 4 2:10 87:7,8,13,15 212:5 250:8,11 353:4,18 364:6 373:10 400 5:12 4004 212:10 415 4:21 416-8441 6:5 419 2:5 43 333:11 45 417:16 47,000 42:2 48 417:16 482-4772 6:21 482-5395 6:17 4:02 335:12 4:04 335:15 4:48 380:18 4th 165:22 166:1 169:6	6 6 2:11 114:6,7,11 114:13 309:1 380:18 60 234:8 601 1:15 4:4 8:21 607-3300 4:9 62 2:9 662-5458 4:13 662-8345 5:13 6:02 435:14 436:6 6:04 436:7 6th 225:19	87 2:10 88.6 355:14 8:18 381:6 8:30 73:8,15 75:8 8th 182:21 183:10 183:19 189:18 213:11 216:5 292:5 339:3
			9 9 2:2,3,13 137:16 137:17,21 373:11 90 355:4,15 90802 4:17 916 5:19 93 2:11 94111 4:21 942-5316 4:5 94244 5:19 944255 5:18 95 355:16 431:3 9834 182:12 9:01 8:4 9:08 1:18 9:58 128:14,18
	5 5 2:11 93:16,18,19 93:22 111:16 117:18 244:16,18 244:19 294:4,6,10 308:19 355:16 428:19 431:8,10 50 4:20 500 4:16 56 2:9 562 4:17 5890 6:16 5:05 380:22 5:43 419:18 5:46 419:15 5:56 435:11 5th 115:13,15 117:13,16 122:4 183:21	7 7 2:12 117:10 120:14,15,20,21 204:21 205:3 208:21 225:6 329:18 380:22 70 292:16 294:16 332:4 355:8 365:5 365:6,7 414:7 417:16 743-6909 4:21 763 120:19 79 365:3 7:00 115:22 7:30 116:1 7:50 83:5 7:51 83:14 7th 227:15 233:2	a a.m. 1:18 8:4 111:7,11 158:10 158:13 209:1 aajc.org 5:9,9 ability 15:5,6 261:15 430:5 able 15:10 20:4 72:1 84:7 152:15 181:6 284:15 329:21 330:6 355:16 418:16 abowd 309:18,22 310:12,18 312:20 314:3,5 315:2 316:6,9,14 318:3
			8 8 2:12 123:10,11 123:16 127:6 130:2 213:3 215:12 82 2:10 850 4:12 857-3376 439:16

[abowd - administration]

Page 4

322:18 324:4 325:10 432:19,20 433:8 abreast 402:21 absence 351:14 362:5 absent 391:18 411:21 absolutely 46:11 88:12 105:21 113:8 242:5 350:12 414:16 433:13 accept 303:10 accepted 351:22 access 128:5 138:16 accompanying 371:4 376:18 accomplish 266:3 267:1 282:7 accomplished 160:6 account 365:14 accounting 13:21 accuracy 433:16 accurate 80:3 103:15 312:8 313:4 315:5 348:16,20,21 350:15 351:10 367:15 368:11 369:1 374:4 377:9 419:5 423:8 424:10,22 425:11 427:22 429:7,9 430:5 431:4,12,18 accurately 313:17 367:8 acknowledge 438:2	acknowledgement 438:1 acquainted 320:15 320:21 acs 57:20 58:20 88:16 93:6 108:16 126:17 127:13 132:15 153:17,18 171:8 176:6 180:14 181:12 192:9 261:7,21 263:13,16 264:18 265:10 272:15 326:21 328:3,4,16 328:21 332:3 333:11 334:7,10 334:16 350:2,7,18 352:14,17 353:9 355:7 356:8 357:3 357:5,6,16 358:4 367:7,16 368:3,7 368:10,12 372:13 414:7 416:15,21 417:17 418:9 426:5 act 126:16 153:19 154:5 155:9 192:17,18,22 194:8 262:9,16,18 263:14 265:11 268:9 277:11 295:1 302:3 349:6 349:9 381:22 382:6 400:4 403:7 403:16 427:18 acted 433:2 acting 36:17 57:5 93:9 198:3,6 203:12,13 237:15 237:19	action 9:7 84:11 106:13 151:9 152:14 168:13 239:8 261:15 347:11,16 402:12 405:7 437:13,18 actions 10:3 active 13:5,6 310:22 actively 418:20 actual 355:12 ad 39:1 adam 283:7 adams 160:1 adc 4:2 add 64:11 87:1 130:21 133:20 151:3 154:13 172:3 176:13 241:14 242:11 245:7 251:9,12 253:7 254:10 257:11 258:2,11 258:16,21 259:8 260:7,16 261:1,22 262:1,1 264:6 272:4 286:11 289:21 291:8 300:6 302:1 332:7 381:14 393:3 403:21 412:6,13 415:4 added 39:5 84:13 103:19 106:3,19 107:3,9,10 130:19 131:8,12 153:4,8 154:3 175:21 251:22 253:11,14 253:15 254:1,3 255:3,8 274:20 278:15 279:9	287:16 295:10 298:19 299:6,8,10 350:17 354:16 362:7,15 372:11 379:6 adding 54:17 55:6 59:13 68:22 69:17 81:14 82:3 107:19 108:1 109:8,22 131:4 133:4,9 134:5 135:11,18 153:12 171:5 270:2 310:14,19 346:19 361:2 364:1 365:22 383:9 408:21 409:3 415:16 421:3,12 430:15 addition 18:20 131:2 251:3 271:22 279:2 291:2 297:11 309:8 330:19 332:20 359:1 360:1 361:17,20 383:13 396:9 400:10 404:2 405:12 412:21 additional 70:2,3 419:1 additionally 352:13 357:2 additions 130:5 address 9:19 69:10 261:17 addresses 310:12 adds 61:12 admin 424:21 administer 9:5 administration 19:3 42:18 44:5
---	---	--	--

47:2 64:14 84:14 84:15,22 86:12,15 96:2 111:20 112:1 112:7 113:11,13 113:16,20 130:20 143:10 245:1 281:19 315:6 319:11 343:3 administration's 37:20 42:7 131:21 administrative 311:1 312:4 343:8 346:15 347:8 350:19 353:7,13 354:2,3,4 355:13 367:22 368:2,9,14 368:16 369:2 391:19 418:18,19 421:1,10 423:10 424:8,13,21 425:3 429:22 430:20 admitted 13:1,8 13:10 advance 20:18 41:1 287:19 advancing 5:6 advancingjustice 5:9,9 advertising 419:3 advice 39:4,9 139:15 246:15,18 247:17 248:6,8,16 249:6,9,10 340:7 342:21 346:1,2 advisable 343:17 advise 16:20 37:18 105:3 advised 193:16,22 248:14 advises 139:10	advising 17:22 124:1 140:11 161:7 181:7 225:8 344:10 advisor 74:5,7,17 116:7 167:21 173:12 404:8 advisors 50:20 advisory 123:20 138:21 139:3,4,9 139:14,19 140:10 141:12 142:20 149:3,7 advisory's 140:17 affairs 25:17 386:2,11 affect 434:19 affixed 326:7 afford 411:19 africa 84:16 african 86:19 141:20 143:3 afternoon 38:17 121:19 200:15 241:2 336:6 381:3 ag 213:17 214:18 215:5 236:19 237:1,4,12 274:22 279:11 283:10 285:11 ag.ny.gov 6:6,6,7 6:7 age 155:8 272:17 349:18,20 351:9 368:18 423:13 agencies 43:20 51:11,18 105:18 276:15 agency 126:16 154:4 156:16 171:7 181:3,8,9,20	182:1 185:3 239:11 273:18 274:1,9,14 282:10 407:13 ago 9:22 68:20 100:11 125:6 146:22 150:21 206:10 225:10 289:14 agree 8:11 112:22 133:13 154:16,19 205:17 223:16 233:1,4 260:12 265:13 267:8 295:22 300:13 302:9 306:15 312:5,22 313:10 316:16,18,18 323:19 348:15,21 389:3,5 agreed 63:8 434:8 439:4 agreement 52:10 274:16,22 agriculture 52:11 ah 242:1 312:16 ahead 271:4 341:13 al 1:3,6 8:16,17 438:18,18 440:3,4 alabama 405:11 405:21 406:14 alaska 11:21,22 13:10 19:19 20:8 alerting 44:21 alex 6:3 alexander 115:3,5 115:18 138:8 159:10 alexinkelstein 6:7	aliens 207:12,18 aligned 84:14 alike 430:2 alliance 336:12 allocations 264:10 264:10 allow 151:8 272:19 allowed 31:8 alternative 261:17 310:13,14,19 315:3 318:10,21 319:6,8,10,15,17 319:19 320:16,17 320:19 350:6 351:14 423:10 alvord 87:19,21,22 amended 380:2 american 4:2 364:11 american's 81:22 americans 5:6 78:19 amount 112:19 142:1 163:15 223:20 423:18 analyses 328:19 329:1,10,12 analysis 106:14 154:21 156:19 213:15,20 260:9 262:2 304:17 309:11 313:20 314:6,6,9,10,16 323:4 324:15,21 325:3 326:12,16 329:5 350:5,7 351:2 353:5 360:19 361:7 369:21 413:10 417:10 425:7
---	---	---	---

434:7,8 analyzed 423:1 analyzing 258:15 422:13 andrea 5:1 381:4 angeles 4:14,19 annual 81:1 130:3 answer 10:10,22 12:12 43:12 55:17 62:16,18 65:7,10 65:17 67:5 69:21 70:1,4,10,11,15,19 79:6 83:20 98:14 100:7 106:6 110:6 118:20 127:17 128:16,19 135:1 136:8 142:14 168:14 176:18 180:11 186:14 188:7 193:4 194:4 195:7 196:1,2 204:6 206:22 208:17 218:1 224:4 226:14,15 248:11 249:7 252:5,19 254:15 259:16 263:8 273:22 274:20 275:10 284:7 289:10 290:6 297:15 303:9,15 303:17,18 305:21 306:4 308:1,14 311:14 327:20 332:1,5,8,9,10,15 345:21 355:3,8 359:15 363:4,19 364:2,3 367:1 369:7 370:9 371:2 373:22 374:6,17 375:14,15 377:3,6	377:7,11,14 379:22 380:2,6,14 390:13 391:13 407:17 414:8,17 418:17 419:8 423:20 426:22 answered 28:22 206:20 208:7 252:4 254:13 263:12,20 294:18 297:14 331:12 333:12 373:10,11 373:12,12,13,14 374:14 375:11,13 400:6 answering 28:12 68:9 108:19 200:13 263:3 330:14,15 362:17 362:19 367:7 answers 10:19 11:1 128:20 275:9 351:17 370:17 371:8,14 372:2,5 377:1 378:9 anteroom 199:11 anti 4:2 anticipated 289:5 290:6 359:3,8,12 anybody 42:15,20 100:14 213:10 217:12 286:8 401:20 416:12 419:12 anymore 75:1 anyway 436:1 apart 266:5 apologize 78:5 200:13 269:10 apparently 72:7 88:7 131:3 147:17	183:7 368:17 387:5 414:9 appear 56:14 61:19 81:10 216:7 223:12 230:15 235:20 266:2 292:16 294:6,16 349:15 377:15 379:3 438:6 appearances 9:9 appeared 63:20 82:10 153:10 appears 65:7,9,9 71:7,8 73:10 79:17 83:6 89:11 96:11 115:11 148:6 149:10 159:15 160:15 166:16 191:12 194:22 195:5 205:9 219:14 226:1 228:21 229:15,20 295:5 309:18 310:16 360:19 373:6,14 379:10 384:18 390:7 411:22 414:10 437:6 applied 222:8 363:15 apply 368:13 431:8 appointee 58:8 74:13 appointment 95:18 96:9 104:17 104:19 apportionment 65:6,21 66:15,20 67:3 81:19 85:20 207:14,20 208:4,5	208:11,15,18 393:20 395:2 396:2 399:18 401:9 404:13 405:5 406:7 408:8 408:12 409:8,15 434:20 appreciate 298:4 approach 351:7 approaches 351:13 appropriate 107:6 111:3 381:16 382:4,5 411:15 415:1 appropriately 411:1 appropriation 147:2,5 148:2,15 approximately 63:14 271:12 327:16 341:18 353:2 355:6,7 402:18 april 35:16,18 115:15 117:10,13 117:16,18 122:4 127:8 129:17,19 133:15 138:11 139:18 141:2 142:10 143:22 arab 4:2 arcane 18:5 area 20:6 44:21 126:2 255:13 378:7 areas 18:3,6 46:14 arms 84:4 86:4 222:15 army 43:15,15
---	--	---	--

[arnold - august]

Page 7

arnold 1:15 4:4 8:21 arnoldporter.com 4:6 arose 370:2 arrange 156:21 157:7 arranging 93:10 arrival 41:9 arrivals 402:12 405:8 arrive 347:13 arriving 219:2,7 arthur 396:9 article 79:20 409:14 articulate 350:21 asenteno 5:4 asian 5:6 aside 131:6 307:13 asked 10:12 17:4 22:5 51:15 63:20 65:2 66:1,9,14,20 67:2,11,15 68:13 68:18 73:22 76:13 79:19 82:8,10 103:8,8 110:10,13 110:13,14,15,16 110:20 112:10 115:21 119:3 129:7,10 132:15 137:2 146:5 157:9 165:11 166:6,12 168:6 171:4,22 175:21 187:12 191:13 203:1 204:5 206:19 207:22 208:6,16 223:13 226:3,9 232:20 249:8 251:7,9 252:3,6	254:12 261:5,6,9 261:21 263:19 267:15 269:2 272:3,11,13,22 279:12 288:7 291:10 292:11,15 294:10 296:14,17 296:21 297:4,6,11 297:13,17 298:18 315:8,12 316:2 322:6 331:11 333:11,12,21 334:4 337:7,12 338:1 356:19 362:8 372:4 391:7 404:9 413:21 416:10 426:17 434:22 435:2 asking 10:21 62:20 71:11,13 85:12 93:1 105:19 107:22 109:11 115:20 127:15 128:22 135:22 136:1 151:10 168:8 176:15 183:13 184:7 188:4 191:10 231:15 232:4,18 233:2 250:16 251:16 253:1 266:5 272:4 280:7 297:21 303:17 305:9 306:3,4 307:14 311:22 313:8 315:21 319:1,8 322:6,7 332:14,16 333:7 334:8,9 364:3 389:5 398:14 402:1 414:4	424:10 425:1 asks 57:8 67:16 78:19 81:22 213:4 266:8 294:1 300:3 asleep 291:16 aspect 123:22 261:9 aspects 82:11 assembler 369:16 asserting 417:4 assertions 321:18 360:18 assessment 302:9 assigned 38:1 46:17 assignments 40:13 assist 30:19 41:11 66:21 67:1 76:16 76:22 95:1 236:20 252:15 260:5,18 260:20 assistant 6:3,15 61:12,15,16 73:4 115:7 283:15 285:11 assisted 28:2 29:12 95:3 assisting 26:11 253:5 associate 203:20 204:1 associated 352:14 354:17 356:12 357:5 assume 58:2 73:5 79:13 83:12 167:9 assumed 367:17 assuming 79:9 105:1 283:10 285:12 311:16	assumption 351:2 assumptions 352:5 atlantic 3:18 atmospheric 44:4 attached 3:11 438:7 attempt 177:14 attend 40:9 47:21 54:11 60:11 201:8 attended 23:15 33:3 126:13 161:19,22 attende 92:14 attention 59:8 294:3 308:8 310:10 352:9,11 358:7 369:4 373:19 377:3 384:22 attorney 5:17 6:3 10:2 15:4,6 62:17 155:18 167:22 168:1 183:15 186:16,18 189:21 189:22 190:3,6 191:2 195:22 233:9,18,21 234:2 235:13,16 236:14 236:16 237:6 298:10,15 388:13 388:16 400:8,9,19 400:22 401:2,17 401:20 402:1,3,4 402:16,20 403:6 403:15 405:11,18 420:6 437:16 attorneys 214:7,11 344:6,7 audio 8:10,10 august 1:10 8:5 39:22 213:3,11
---	--	---	--

[august - believe]

Page 8

216:5 440:6 authority 150:13 258:21 261:21 348:13 authorized 9:5 availability 403:8 available 39:8 91:22 92:2 102:5 116:1 137:9 177:16 265:10 295:1 296:20 311:1 312:3 315:6 399:4 avenue 1:15 4:4,16 5:12 6:10,16,20 8:21 438:16 aviation 18:10 avoid 428:22 aware 42:22 53:10 58:4 105:16 119:11 122:17 139:8 162:15,16 169:17 217:2,12 237:20 286:8 307:4 334:22 376:4 385:10 386:12,17,21 387:2,11,18 389:16 390:14,17 390:19 392:5 394:7,12,14,18,20 395:1,3,5,7,12 396:12 397:16 401:15,22 402:3,7 402:11 404:18,22 406:10 407:4 408:16 409:2 416:3,7 435:1 awkward 30:14 31:14	b b 127:13 310:13 310:14,19 315:3 319:8,19 320:16 320:19 351:13 bachelor's 12:10 back 12:7 25:2 30:21 44:12 46:11 47:22 50:15 56:10 64:22 71:3,12 92:22 102:4 132:2 148:11 153:4,8 162:10 185:11 187:14 191:18 204:17,21 208:20 212:8,9 214:3,4,15 215:15 216:12 236:6 240:21 250:15,17,21 252:8 263:5 266:1 270:12 271:4 275:12 278:7 279:13,18 281:5 285:22 287:4 309:6 315:7,8,10 315:13,14,15,16 315:18,22 316:3,4 316:7,15 319:14 321:12,22 322:5 323:18 326:11 335:14 336:21 350:8,21 363:10 371:3 372:1,9,11 373:5 376:19 406:16 411:11,12 411:13 414:6 419:17 435:13 backed 313:1 background 11:17 18:17 42:9 46:22 126:2 127:4 271:2	277:8 283:4 434:9 434:14 bad 361:14 bailey 6:9 balance 363:14 ballpark 49:13 238:8 292:8 328:14 bannon 115:21 116:4,6,11,19 117:2 119:16 121:22 122:18 123:1,5,7 bar 265:22 barbara 11:20 base 227:16 302:5 based 20:21 65:7 67:18 81:1 86:14 110:4 133:13 141:16 153:9 154:2,4,21 156:18 177:19 181:6 191:12 225:22 229:6 235:19 246:15,18 247:17 248:16 285:10 298:8 328:20 329:10 331:1,17 351:8 352:17 355:6,11 357:6 360:10 381:13 382:9,13 386:5 392:16 414:20 415:5 431:13,21 435:16 basic 14:13 32:3 180:6 193:1 basically 16:17 18:9 21:7 22:3 74:9 84:21 123:22 124:14 155:16	224:1 239:9,12 333:18 355:9 358:20 361:7 369:20 411:21 417:11 431:1 basis 38:12 47:16 47:20 239:10 249:8 264:10 266:11 267:14 274:17 300:10 302:4 303:16 333:10,17,21 334:1 368:19 371:21 414:1 bates 56:5 62:7 82:15 93:17 164:20 194:14 318:3 384:2 428:20 beach 4:17 31:9 began 15:20 95:19 96:9 104:16 347:10 beginning 1:18 34:6 201:19 203:16 begins 111:10 158:12 212:4 250:11 308:22 358:9 380:21 begun 346:18 behalf 1:19 4:1,10 4:14,19 5:1,15 6:1 6:8 behold 350:8 belief 106:8,12,19 330:12 350:22 425:14 beliefs 262:5 believe 13:6 16:2 27:16 45:9 55:20
---	---	--	--

[believe - budget]

Page 9

57:21 95:7 101:6 101:15 102:7 118:1 130:3 140:9 147:4 203:11 204:4 208:12 209:4 217:4 222:20 238:4 242:22 266:19,20 268:12 269:6,8 286:10 288:9 305:4 315:2 318:8 324:3 340:10,18 353:3 357:8 361:20 364:22 370:6,19 371:22 372:6,6 374:16 375:3 383:19 386:7 396:15,18 397:1 399:6 403:4 403:14 417:7 421:4 426:3 432:8 432:20,22 433:2,5 434:2 435:6 believed 424:7 425:21 believes 424:20 believing 433:15 benefits 363:22 best 37:19 70:18 141:16 164:22 175:4 184:20 185:1 239:19 267:5 282:19 323:6,11 324:10 324:11 337:19 361:7 381:16 382:4 391:9,13 423:19 428:6 429:12,20 430:4 better 162:22 163:22 267:21	beyond 233:20,20 234:1 419:6 big 41:3 bigger 361:15 biggest 204:12 billion 224:1 361:10 biology 14:3 bit 17:19 31:13 47:13 53:1 75:20 253:2 336:21 356:18 381:8 black 147:15 163:15 336:12 379:19 blacked 163:13 215:10 blanche 167:8,11 167:13 184:11 185:22 188:1 269:13,17,22 338:5 381:9 410:9 blanked 205:12,16 222:6 228:22 229:7 231:19 blanking 410:13 blanks 423:12 block 296:19 352:13 357:4 379:19,21 380:1 403:19 416:5 422:14,14 423:2 426:17,18 427:18 blocked 222:13 339:16,20,22 340:5,12 379:17 blog 67:6,10,19 78:21 79:16 81:8 81:20 146:14 blummerman 203:5,7,9,10,20	204:6 board 18:16 27:4 27:9 32:4 36:14 37:1 360:9 body 153:11 booked 90:15 born 80:22 boss 252:6 266:8 273:16 274:12 278:14 279:11,14 280:3 282:8 284:13 411:21 bottom 121:11 127:7 386:10 boutin 2:5 5:16 190:18 336:18 419:19 420:5 422:7,18 423:16 424:16 425:12,18 426:6,21 427:14 428:18 434:1,13 435:6,8,15 box 5:18 bpark 4:18 brady 53:2 branstad 74:4,15 75:7,17 77:18 97:12 157:9 164:21 166:12 167:15 173:10 197:22 256:3,21 283:5 410:10 break 105:4 111:1 111:3,5 158:8 165:10 211:6,15 240:12,15,15 244:9 250:3,16 308:17 417:18 418:3 breaking 84:16	brian 4:15 brief 22:7,8 47:20 92:14 125:22 briefed 18:14 19:16 86:9 90:3,4 124:15 125:17 217:19 briefing 40:14,17 57:9,12 59:1,19,20 60:2 61:1,2,5 64:3 72:3,6,7,9,15,18 75:18 85:13,21 86:7 88:15 89:5 89:12 90:7 92:5,6 93:3,9,13,13 126:13,19 216:9 216:11 briefings 21:22 48:1 91:8 126:5,9 431:21 briefly 121:21 bring 92:9 161:2 172:11 416:4 bringing 32:4 359:6 405:22 broad 4:8 288:18 broader 338:21 brooke 115:3,5 138:8,16 139:16 159:10,16 brooke's 138:15 brooks 406:14 407:3 brought 27:11 76:2 170:3 budget 20:20 44:6 52:3,7 86:5 124:19 162:19 164:7 203:14,18 224:2,9 229:10 361:10
--	--	---	---

[build - campaign]

Page 10

build 351:16	369:7,22 370:7,8	380:2 423:9	433:10 434:12
building 89:19	370:18,20 371:2,6	c003134 356:21	439:12
90:22 91:21	372:4 377:13,19	c15 339:7	called 1:13 9:15
bulk 345:11	378:1 388:10	c30 346:16 348:16	53:5 67:19 72:2
bullpen 197:21	391:4,15 392:1	352:9	74:2 84:17 175:15
198:9 199:3,5,14	394:8,15 395:13	c33 379:22	241:13 269:21
255:13	396:13 397:14,19	c34 380:2	270:12 342:11
bullpens 197:14	398:13 399:5	c5 341:5 345:17	402:12
bunch 262:11	403:5 405:17	346:4	calling 279:17
bureau 6:4 19:16	407:5,10 408:17	cabinet 51:11,18	282:10
42:16,19,21 44:1	412:6,13,15,18,21	calendar 60:7,8,10	calls 69:18 83:17
45:6 46:18 47:10	415:1 417:11	60:16,18 61:8,13	98:11 116:13
47:18 51:7 57:9	418:2 420:22	61:20,21 64:5	117:5 118:17
57:12 59:21 72:3	421:6,10 422:13	72:18,21 73:1,3	122:7 130:12
73:13 75:17 77:18	424:7,20 425:15	89:15 90:12,17	133:1,21 140:6
81:2 88:15,16	425:20 429:20	91:13,16,19	142:11 143:7,16
89:5,18 90:4,19	430:1,4,18,21	117:18 233:16	144:20 146:18
91:7 92:7 105:17	431:22 432:4,11	288:2	148:21 159:20
124:12 125:21	433:13,15 434:4	california 4:17,20	161:5,15 163:4
129:15,18 132:13	434:18 435:3	4:21 5:15,19	184:17 186:7,12
132:22 136:18	bureau's 66:13	11:20 336:14	195:21 200:22
139:10,15 153:15	106:1 208:10	420:7,8,9,10	202:19 226:5
153:20 154:12,19	323:3 324:21	call 31:9 53:4	268:14 273:18
163:19 169:21	325:2 332:15	102:19 117:12,15	274:1 275:3
176:12 219:6	350:5 357:18	118:7,16,21 122:4	278:12,21 279:10
224:6 237:16	422:22 425:7	122:9 143:11	285:3 286:7,16
309:10,14,22	426:11 427:5	156:6 165:20	301:2,17 303:3,4
311:3,22 312:14	428:6	168:7 169:14,16	304:5,6 305:1,18
312:18 313:9,14	bureaus 41:15	178:3,6,6,21	306:12,22 307:20
313:15,20 314:21	43:20 44:8,22	181:17 183:15	308:11,12 340:13
317:16 321:12,17	45:3,4,16,18 46:10	189:20,22 190:2	345:19 366:20
321:21 323:17	46:12 49:6	191:4,5,6 208:22	380:7 390:12
324:2,12,17,22	burlington 4:11	209:10 210:3,18	392:8,17 422:5
325:12,13 326:12	busy 276:8,13,17	213:4,8,11,17	428:8
326:15 328:19	382:21	214:18 215:5	campaign 3:9
329:5 334:19	c	231:14 236:11	17:15,16 76:2
348:19 350:14	c 4:1 5:6 8:1 25:10	237:10 270:8	383:21 384:3,13
352:1 353:5,12,13	25:11,11,11	273:9 274:21	384:13,18 385:1
354:1,2 357:22	319:10,17 320:17	281:13 284:3,9,10	385:11,20 386:15
358:9,13 361:6	350:6 351:13	285:5 291:14	387:12,15,19
363:21 367:11	353:18 368:20	298:14,16 328:18	388:4,20 389:1,4

391:1,5 392:2 candidates 100:9 cannon 6:13 capable 434:6 capacity 124:6 203:12 capital 1:17 385:7 439:14 care 16:22 304:13 career 36:18 37:18 37:19 41:10,10 carefully 302:12 360:5 cares 18:3 carry 239:18 266:8 349:18 casa 4:2 case 1:5 8:18 16:18 23:16 84:12 149:12 155:6,10 155:15,20 156:5 156:10 160:2 192:18,22 193:3 193:14,20 194:7 194:11 201:18 229:22 230:15 235:20 239:22 240:5 261:19 291:15 298:17 307:12 308:5 311:8 312:6 336:12 338:16 352:8 371:12 372:6 406:18 426:4 440:2 cases 155:1,3,4,5 155:16,18 156:4 157:14 172:8,9 192:22 240:1 349:9 370:2 383:8 416:3 417:21	430:7 catch 72:1 catching 74:1 caught 59:7 279:19 434:5 cause 330:20 332:20 360:1 361:8,15,21 366:15 418:11 caused 103:17 416:21 cc 439:17 ccr 1:17 437:3,20 439:14 cea 50:17,19 ceased 185:18 187:12 188:2 411:3,7 cedcap 162:18 cell 8:8 cellular 8:7 census 3:5,7 10:5 18:17 19:16,18,20 20:2,2,5,9,17 21:5 21:16 42:16,19,21 46:18 47:10,13,18 51:4,7 54:18 55:7 55:14 57:9,12,19 59:1,14,21 60:14 60:18 63:5,16,19 63:21 64:3,15 66:2,5,6,13 67:11 67:16 69:1 71:4 72:3,8,10 73:13 75:9,17 77:18,21 78:19 79:2,19 80:4 81:11,15 82:4 83:9 84:13 85:6,21 86:4,5,10 88:15,16,16 89:5 89:18 90:4,19	91:7 92:7 93:4 95:20 97:3 103:15 103:21 105:10,17 106:1 107:7 109:21 110:15 115:22 117:13 118:22 119:4,8,11 119:17,20 122:19 123:20 124:1,12 124:15 125:21 126:1,4 127:11,13 128:6 129:15,18 130:5,21 136:18 139:5,10,15,17 140:16 142:2,18 146:22 149:5,8 153:4,13,15,20 154:12,19 156:17 160:19 161:7 162:1,20 163:1,19 164:5,9 165:2 169:21 175:22 176:9,12 180:8,9 204:3 207:7 208:1 208:10,13,18 213:5,11 214:5 220:16,18 221:11 221:15 222:14,16 223:7,19 224:6,8 224:10 229:8 230:12 237:16 241:15 244:21 251:1 252:1 258:16,22 261:20 263:18 264:7,10 265:17 270:3 271:20 272:1,17 272:17 275:8 292:17 294:16 309:10,14,22 310:15,21 311:3	311:22 312:2,14 312:18 313:9,14 313:15,20 314:21 315:4 319:10 320:15 321:12,17 321:21 323:3,17 324:2,12,17,21,22 325:2,12,13 326:12,15 328:19 328:20 329:5 330:1,15 331:22 332:1,15,22 333:4 333:10,17 334:3,9 334:19 337:2,11 337:15 338:10 346:20 347:22 348:4,5,12,19 349:19 350:2,5,14 350:16,18 352:1 353:5,12 354:1,16 355:2,14 357:2,18 357:22 358:9,11 358:13 359:8,15 361:6,18 362:17 362:19 363:17,21 365:11 366:1,12 367:10,14 368:15 369:7,22 370:7,8 370:18,20 371:2,6 371:22 372:4,9,16 376:14 377:13,15 377:19 379:6 383:10,14 385:3 388:10 391:4,15 392:1,7 393:4,9 394:8,11,13,15 395:10,13,15 396:10,13 397:14 397:19 398:13 399:5 400:11 402:2,6 403:5,19
--	--	--	--

403:21 404:3 405:3,13,13,17 406:22 407:5,10 408:4,17 412:6,13 412:15,18,21 414:17 415:1 416:17 417:11 418:2,11,16,17 419:8 420:22 421:3,6,10,12 422:13,22 424:7 424:11,20 425:2,6 425:6,15,20 426:11,18 427:5 428:6 429:19,20 429:21 430:1,4,16 430:18,21 431:22 432:4,11 433:13 433:15 434:4,18 434:19 435:3 censuses 326:19 333:5 359:10 ceo 12:5 certain 20:21 84:9 106:12 128:17 132:16,18 135:6 141:4 154:8,11 272:17 330:22 335:19 351:4 367:1 371:14 375:4 391:2 398:4 398:10 417:12,12 417:15 430:13 certainly 58:6 140:18 144:8 160:11 229:22 251:6,8 268:6 277:9 281:16 285:21 318:14 329:12 348:7 354:18 375:5	380:15 390:13 certificate 437:2 certify 437:5 cetera 44:12 302:3 413:19 cf 1:5 chain 159:9 160:15 230:8 231:1,21 380:10 384:12 385:13,14 386:6 chair 123:20 chairman 25:18 53:2 challenge 280:3,5 challenges 124:16 124:17 challenging 10:3 261:3,12 chance 147:13 282:20 change 18:11 84:8 106:10 181:18 346:7,8 366:12 372:5 377:6 380:11 440:7,7 changed 177:19 374:1,6 changes 86:14 359:11 438:6 changing 106:1 134:2 characterization 223:17 265:13 295:22 312:13 characterize 112:19 119:6 266:18 characterized 68:19 313:17	characterizing 107:4 charge 36:19 203:14 chasing 150:15 check 13:7 55:17 162:6 373:5 checked 64:5,8 chemistry 14:3 chief 33:8,10 35:13,14 36:7,9,12 37:10 39:11,13,15 39:17,20,21 102:9 102:18 125:20 160:7 198:8,11 199:17 309:22 377:18 395:9,14 childhood 402:12 405:7 choice 181:2 413:2 chooses 305:16 chose 436:1 christa 377:17 christine 25:8,10 25:12 ciccone 25:8,11,12 circles 80:2 circulate 48:7,9 circulated 48:15 circulating 48:12 citizen 108:18 155:8 272:17 349:17 353:10 361:2 368:18 414:18 416:21 418:4,9 425:22 426:13 430:5 citizens 262:10 351:10 355:4 367:7 385:4 388:15 414:1	423:13 430:2,17 431:7,10,15 citizenship 10:4 21:12,14,16 24:3,5 24:9,15,17,21 31:17 47:14 51:4 53:8,12,18 54:9,12 54:17 55:6,13 59:13 67:12,16 68:22 69:12,17 75:9 77:21 78:20 79:18 81:14 82:1 82:4 87:2 96:1,14 97:7 103:2,5,7,11 103:18 105:7 106:3,9 107:3,6,13 107:19,19 108:1 109:8 110:1 126:6 126:8,8,12,14 129:20 133:5,9 134:6,12 135:5,12 135:18 136:11 140:4,12 143:15 144:1,15 146:7,11 149:17 150:3 151:5,19,21 153:3 153:8,13,17 154:13 156:17 157:5,18 161:2,20 162:7 163:3,7,9 164:10 166:21 168:4 170:11,22 171:5,17,21 172:1 172:3 175:21 180:8,15 187:7 188:5,11 190:4,7 190:11,13 193:5 195:4,9,16 202:8 202:13,17,22 204:6 207:8 208:2 209:12,21 216:10
---	--	---	--

216:20 218:14	359:1,16 360:1,15	cleared 48:15	182:3,6,11 186:20
219:13 220:13	361:1,21 367:8,13	154:7	187:4 189:5,9
221:9 223:4,8,9	368:18 381:15,21	clearing 48:12	190:22 191:17,21
224:11 225:12,16	382:1,6,7 383:7,7	283:1,2	192:1,3 194:6,13
225:20 230:11,14	383:9,14 389:5,6	clearly 137:1,8	194:17 195:17
230:18 231:17	392:6 393:3,18	149:12 159:5	196:8 199:19
232:2,6,8,19 233:3	394:22 395:22	218:2 261:7 300:9	200:1 201:3,22
237:18 239:12	396:10 399:16	307:10 371:15	203:3 204:20
240:3 241:15	400:10,20,22	client 186:18	206:7,16,21 210:9
242:11 244:22	401:7 402:1,6	193:16,22 195:22	211:5,8,13,20
251:1,4,9,13,22	404:3,12 405:12	340:15,16	212:7,10,13,16
252:16,21 253:7	406:6 407:1,14	clients 266:22	215:17,22 218:4,9
253:14 254:10	408:21 409:3	climate 18:11	219:17,21 221:17
255:3,8 257:12,12	410:5 412:6	359:4	221:21 224:14,18
258:2,12,16 259:9	413:18 414:4	closer 355:15	226:2,12,16,20
260:7,17 261:1	415:5,16 416:5	coalition 1:3 4:2	228:11 234:18,22
262:21 264:18	417:5,13,20	8:16 241:4 438:18	235:21 240:7,10
265:10,16 268:1,8	418:21 419:22	440:2	240:16 243:15
270:2,16 272:1,5,9	421:3,12 422:15	coincidence 85:17	253:20
272:16 273:2	423:2 424:10,11	colangelo 2:3 6:2	cold 186:11
277:21 278:15	425:1 427:6	9:18 10:1 13:14	colleague 25:5,13
279:2,9 280:2,13	430:16 434:19	26:17 55:22 56:4	colleagues 99:19
285:22 286:12	city 336:11	56:6 62:5,22	99:22 101:18
287:16 288:8,17	civil 4:7 5:11	69:20 71:2 82:19	collect 263:13,15
289:6,22 291:2,8	claim 155:9	83:19 87:10,13,14	265:18
291:19 292:13	clarification 70:22	93:21 98:13 106:5	collected 80:4
296:18 297:12	clarified 13:13	108:6 111:4,13	collecting 263:9
298:5 300:6 309:9	26:14 186:10	114:9,12 116:16	collects 262:13
310:14,19,22	191:15 201:15	117:8 118:14,19	college 13:15
311:22 312:3	243:13 353:16	120:4,11,13,18	colloquial 16:16
315:5 319:8,12,16	clarity 20:16	122:10 123:4,9,13	columbia 89:22
320:17 323:4	clause 303:3	131:10 133:7	combine 319:7
324:16,21 325:3	clear 10:20 48:7,9	134:4,17,22	combining 351:13
326:17 330:1,14	48:20,21 49:4,9,15	137:16,19 140:13	424:12 425:2
330:19 332:5,8,20	50:8 84:13 150:13	142:13 143:13,21	come 25:3 29:9
337:2,20 338:10	154:10 202:22	145:1,5,9 146:21	37:1 39:7 47:19
338:15,22 339:14	229:11 242:3	147:8,12 149:6	47:22 50:9 76:5
341:1,3 346:19	261:21 275:17	158:7,15,18,21	77:9 90:6 91:3,6
347:22 348:4,19	293:8 313:12	160:13 161:8,18	91:11 109:3 129:4
350:17 351:9,18	342:15 433:11	163:10 164:13,16	154:18 156:15
353:6,10 354:15		166:2,18 167:1,4	157:22 170:7

[come - concerned]

Page 14

183:21 192:4,14 213:15 214:16 233:9 262:16 265:20 266:4,14 268:4,7,10 270:18 273:6 289:5 291:6 318:14 351:13 371:7 411:20 comes 41:14 43:16 44:1 92:7 275:12 comfortable 389:12 coming 44:22 74:10 91:1,20 92:14 105:9 162:19 219:5 command 43:15 commenced 230:8 comment 387:7 389:14,21 commerce 1:6 6:14 8:17 9:21 15:21 16:1,11,13 16:20 17:6 18:2,6 22:2 26:3,6,8 30:11,12 31:1,22 32:19 33:18 34:14 34:17 35:4 42:2 43:21 48:15 53:11 63:13 73:5 74:22 75:4,22 95:19 99:8 100:15 104:6 104:8 124:9 125:9 150:12 169:19 170:9,20 172:3,17 173:20 176:2,11 177:5 188:20 219:1 227:22 245:21 246:5 247:5 248:4,22 251:3,9 258:11	259:13 260:19,21 273:10,14 274:2 274:14 278:13 279:1 280:1 291:7 291:9 295:20 296:6,8,11,12 299:9 300:5 319:20 320:20 329:21 330:5 338:19 340:22 341:2 342:8 344:6 347:21 387:7,20 391:4,15 392:1,15 392:21 394:8,15 395:13 396:13 399:12 401:16 403:2 404:19 405:17 406:11 407:5,10,12 408:17 410:10 413:6,11 414:22 415:3 416:10 420:21 421:9,21 422:3,11,21 424:6 424:19 425:13,19 426:10,19 427:4 435:2 438:18 440:3 commerce's 259:10 381:14 382:15 423:6 425:8 commitment 185:9 commits 412:14 committed 302:1 403:6,15 committee 3:1 4:2 5:11 12:1 16:11 16:20 17:1,3,7,22 18:3,10 22:20,22	23:1,7,9,14 25:17 26:3,6 28:13,19 53:3 123:20 130:4 138:21 139:3,4,9 139:14,19 140:10 141:12 149:3,7 291:22 293:2,6,9 293:14 committees 18:6 287:22 290:15 common 108:2 110:4 201:7,10 281:13 385:6,6 communicate 51:14 215:2 426:10 427:4,12 communicated 71:6 236:22 403:18 communications 196:3 company 1:17 439:14 compare 333:4 379:22 429:21 comparing 355:12 380:3 comparison 327:4 comparisons 333:8 compel 349:4 compensate 419:4 complete 28:12 103:15 253:6 351:10 354:3 368:22 417:16 418:17 419:5 423:7 424:9,9,22 425:11 429:6,9 438:5	completed 435:15 completely 10:10 306:9,20 419:8 completeness 350:16 composed 363:4 computer 342:5 387:5 comstock 1:12 2:2 2:7 8:14 9:14,20 33:6 56:1,10,12 62:1,6,8 63:2 73:7 80:9 82:14,15,20 87:6,16 93:16,18 93:22 109:7 111:14 120:21 121:12 151:10 159:1 182:13 189:12 194:18 200:2 212:17 216:1 222:1 224:19 226:21 241:2 250:15 293:8 302:11 309:6 316:11,13 318:1 326:4 332:12 335:16 336:6 375:15 381:3 423:17 436:8 438:2,14 439:3 440:5 concept 307:18 308:4 conceptually 307:14 concern 68:7 87:4 131:3 160:5 161:1 215:3 concerned 67:22 68:3 86:22 105:14 105:22 108:19
--	---	--	--

[concerned - contracts]

Page 15

157:22 207:18 214:21,22 351:11 358:13 414:11 concerning 41:17 concerns 124:18 359:4 conclude 67:14 71:14 141:11 concluded 311:3 336:2 436:8 concludes 111:6 211:22 308:18 335:22 380:17 436:4 conclusion 69:6,7 131:21 154:20 185:6 213:16 214:17 230:17 265:20 301:3,20 303:4 304:7 305:2 308:13 312:12,14 320:21 321:12,22 323:19 331:19 340:14,19 347:14 411:8 433:22 conclusions 317:1 317:9 321:16 331:17 conclusive 317:16 conclusively 359:22 concurred 30:5 conducted 20:21 153:14 356:17 conducting 21:5 335:3 366:11 conference 80:7 90:7,10,11 165:20 291:14 434:12 confidence 224:6 356:15 418:22	confident 407:2 confidential 115:6 196:3 confirm 37:5 55:3 232:8 confirmation 16:11,13 20:19 23:22 27:15 28:16 29:2 31:16,19 32:8,11,22 33:4 37:3 54:20 55:8 69:2 76:17,22 124:7 confirmed 28:12 29:1 32:8 55:1 63:7 81:16 219:8 234:16 337:10 confirms 67:10 conflating 106:16 conflicted 92:16 congress 53:15,18 59:8 84:1,9 127:12 129:9 146:4 148:19 149:11 288:4 393:20 395:2 406:14 congressional 52:16,19 53:8,12 57:19 58:20 61:6 66:14,20 86:9 87:2 130:4 142:17 207:14,20 208:4,5 287:18 396:2 399:18 401:9 404:12 406:7 408:12 409:8 434:20 congresswoman 294:19	conjunction 342:9 368:10 connected 223:19 224:8 236:7 283:9 356:15 connection 143:20 372:3 consequently 181:7 consider 105:18 151:7 265:16 289:17,18 332:17 345:14 361:16 365:11,13,16,20 412:3 413:4 414:9 consideration 347:7 considerations 95:22 244:21 considered 16:19 80:2 109:10 158:5 360:4 366:14 371:17 413:19 425:10 considering 95:19 96:10 104:13,17 134:2,5 290:5,8 346:19 347:11 consigned 301:5 consistent 42:6 constitution 6:16 6:20 consult 311:12 consulting 12:6 consumed 411:18 contact 48:11 164:22 165:11 166:13 174:9 175:14 179:22 187:6 213:16 214:17 215:4,7,13	269:2 275:15 409:22 412:17 415:2 contacted 25:5 48:6 157:12 174:6 197:1,10 contacting 167:8 167:13 439:5 contacts 214:1 232:13,20 270:11 contain 376:5 contained 217:17 264:18 contains 379:4 384:3 content 2:1 95:21 130:5 149:8 contents 217:15 contesting 317:5 context 142:7 143:19 149:2,9 191:11 196:21 208:3,14 294:5 306:14 313:13 314:13 317:14 357:9,22 358:2,20 362:6 363:3 365:21,22 366:11 367:2,2 398:12 429:2 continue 8:11 150:2 160:16 264:15 266:18 367:18 continued 217:22 continues 385:5 continuing 190:16 190:21 350:18 contract 410:11 contracts 129:18
---	---	--	---

[contributed - counsel]

Page 16

contributed 244:3 244:6 433:6	conveyed 177:9 234:4 422:3 426:7	186:4 198:15 200:9 204:4 205:7	375:16,17 376:9 376:10 382:11
contributing 359:7	conveying 168:17 237:9	206:3,4,10,14 208:12 209:2,3,7	383:18 384:14 385:11 386:4,5,6
control 334:12	convinced 323:18	210:1 214:12	411:3 416:15,18
controlled 334:13 334:18 335:3	copied 56:15 144:18 209:6	216:18 218:15 220:21 222:9	416:19 417:1,2 418:4,12 419:10
conversation 51:16 55:7,10 85:4,8,10 101:8,11 101:14 116:22 119:16,20 120:6 120:10 133:15 142:6 178:9,11 179:1,3,5 185:18 187:12 195:15,19 203:15 210:15 221:4,6 233:19 237:6 255:5 280:16 298:9 338:21 382:13 383:12 394:4,9,13 394:16 395:8,14 396:8 397:17 400:3,8 401:17 404:1 405:10,18 406:5,13,19,20 407:7 408:19 409:13	copy 56:11 75:7 78:6 138:8 341:11 341:21 342:2 372:21 387:1,6 439:2	228:4 229:2,3,4,5 229:21 230:2 231:16,18 232:14 233:11 234:3,10 234:16,17 240:4 241:21 243:7 246:1,14 247:19 248:14 250:1 251:4,5,10,19 255:4,14,19 256:12 257:5,13 262:14 264:22 266:19,20 269:1,4 270:1,4,7,22 273:3 277:2,3 279:7 282:9,16 285:20 288:9 291:20 292:1 294:13 295:2,8,17 297:5 298:12 299:1 309:12 318:11 319:1,12,13 326:7 326:22 337:3,4,6 337:11,15,18 338:3,4,6,7,11,12 338:15 339:4,5,20 339:21 341:22 342:18 345:4,9 346:5 348:2,6 352:3,16,19 364:12 366:10 368:3,21 369:3 370:9,14 371:2 372:12 375:11,13	427:20 438:4 corrections 438:6 correctly 33:19 142:16 255:12 260:3,8 279:20 295:5 332:5 355:9 381:12 382:12 414:8 correspondence 41:14 283:2 391:20 cost 47:12 222:16 223:21 288:21 319:18 320:18 359:12 costly 310:20 312:1 313:2 315:3 council 50:2,3 51:1 counsel 1:13 6:15 6:20 8:15 9:9 11:7 12:8 39:5,10 50:16,20 56:4 62:20 69:22 70:7 95:5,6,9 97:21 98:3,7 99:4,5,18 100:15 101:19 105:3 127:19,21 128:2,5,18 158:7 188:21,22 189:4 196:11 217:4,7 219:2 227:6,22 231:4 240:8,11 245:20 246:16
conversations 8:7 24:6,10 34:16 35:2,7 123:1 136:14 172:9 188:1 196:19 209:15 233:7 279:5 342:10 396:14,21 397:21 398:3,8,10 404:19 409:3 421:14	correct 12:11 14:7 19:11 21:21 22:12 25:14 26:9 29:11 29:14 34:11 35:19 36:3 37:14 39:19 40:5 42:21 45:19 46:16 48:10 56:22 57:3 58:9 61:22 67:13 68:12 73:1 73:6 74:19,21 78:14,22 83:3,6 89:6,20 91:2 93:7 99:21 100:11,12 104:15,18,21 105:1,4 113:1,3 114:3 115:14,16 116:9 119:1 127:14 128:9 131:17,20 138:10 139:12 140:22 141:1,10 143:4 144:17 148:10 151:1,5 152:1,8 159:18 163:12 165:13 166:4,22 167:11 168:2,19 170:13 180:16,17 181:21 183:4,10 183:11 185:19		
convey 164:3			

[counsel - david]

Page 17

247:6,9 248:1,5,8 249:6,19 253:21 258:10 269:2 278:19 311:13 318:16 325:16 342:7,21 381:4 410:18 423:18 437:12,15 439:9 439:10,17 counsel's 70:17 128:11 214:8 232:21 346:1,2 counsels 98:17 count 66:1 69:11 124:17 162:6 208:16 224:10 287:9 310:21 312:2 315:4 329:2 331:21 359:13,14 360:21 369:1 416:15,17 418:12 419:5,6 423:8 431:12,18 counted 63:21 65:3,6,21 67:3 81:1 207:13,19 208:6,8,11,15 counterpart 165:1 counting 67:20 68:1,4 countries 108:15 108:22 109:5,10 109:14,16,22 110:7,10 413:17 counts 81:19 416:19 county 4:19 couple 11:21 18:19 23:2 31:7 174:15 178:17 244:8 381:10	416:14 course 13:22 14:17 28:7 48:12 125:8 179:9 288:4 288:15 307:10 316:20 345:13 435:20 courses 14:3 court 1:1 8:18 9:3 9:12 13:12 26:13 154:22 155:3,4,5,6 157:13 186:9 191:14 193:3 201:14 211:14 243:12 353:15,20 381:6 cov.com 4:13 cover 70:3 126:7 covered 18:9 126:8 covers 14:17 18:16 378:7 covington 4:11 create 239:9 424:9 created 341:16 343:14,16 cross 321:19 csr 1:17 437:3,20 439:14 cubicles 256:16 current 33:7 43:9 224:6 359:3 currently 13:1 39:15 41:4 132:15 207:8 261:20 272:15 296:20 352:14 357:4 367:15 403:19 cursor 154:21 cutrona 235:7,10 235:15,22	cv 381:6 cvap 181:11 352:13 354:5 357:4 429:7,10 d d 8:1 318:10,21 319:6,15 351:14 368:20 429:5,8,12 d.c. 1:9,16 3:19 4:5,12 5:3,8,13 6:11,17,21 8:22 13:4 438:17 439:16 daily 38:12,13,19 38:22 49:1 damage 361:15 dan 7:1 9:1 daniel 4:11 danielle 6:1 235:7 235:10,15 danielle.fidler 6:6 daniels 4:15 dares 388:14 data 126:17 153:18 155:9 181:12,16 185:4 222:16 232:22 262:21 263:13,15 274:15 275:8 310:22 315:5 316:19 319:11,16 320:17 327:11,15 328:12 333:7 350:2,7,8,19 351:5 351:15 352:13 354:5,6,14,17 355:9,11 356:15 357:4,11,16 359:22 360:14 362:12 367:10 382:6,7 383:7	403:9,17,19,22 414:13 416:6 417:6,8,9 418:1,1 422:15 423:2 424:10,12,22 425:11 426:5,18 427:10,18,22 429:10 431:1 date 55:4,4 59:11 63:10 64:9 73:10 94:10,11 105:1,4 126:11 128:13 133:12 135:15 136:17 140:20 147:6 169:12 182:20 183:20 195:2 230:1,3,6 237:22 238:13 292:10 314:1 374:8 387:16 438:14 440:6,19 dated 56:20 78:21 88:1 115:13,15 127:8 138:11 183:10 222:11 230:1 235:7 309:21 323:9,10 341:9 374:10 375:21 376:8 437:21 dates 136:4,7,13 213:22 dave 85:2 david 4:3,19 6:14 46:21,22 56:20 57:1 83:1 85:4 87:18 93:1 98:6 100:2 110:15 201:5 202:6 240:12 241:3
--	--	--	---

david.gersch 4:6 david.holtzman 4:22 davidson 95:11 100:6,8 218:17,22 220:20 221:3 225:2 228:7,12,15 228:19 230:17 231:7,13,20 232:1 288:15 386:18 396:15,21 397:17 397:22 398:3,8 399:7 day 20:2 31:3 33:18 34:10,12 42:3 48:22 58:16 63:12 73:4,18 74:1 85:6,13,17 117:20,21 148:13 154:9 155:18 168:7 225:14 226:4 232:12,12 232:16 316:12 361:14 433:9 437:21 days 162:12 218:17 341:18 370:14 439:7 ddewhirst 6:18 de 4:2 dead 411:7 deadline 84:10 370:11 deal 281:4 375:19 dealing 152:14 224:7 245:17,19 245:21 257:18 281:3 282:22 285:15 306:15 dealings 249:21	dealt 52:11 dear 439:1 decades 347:8 december 124:4,4 238:6 239:2 290:16 309:9 348:17 397:8,11 419:21 420:13 421:2 424:4 426:8 decennial 10:5 54:18 57:19 58:20 59:5 61:7 67:15 78:18 79:2 82:4 127:13 130:21 153:13 175:22 176:9 180:9 192:11 203:21 204:2 261:20 265:17 272:19 292:17 294:16 319:9 326:19,19 328:20 330:1 333:4,5 334:9 374:5 379:6 383:9 383:14 392:7 393:4 396:10 400:11 402:2 403:21 404:3 405:13 416:17 418:10 429:19,21 deception 38:5 decide 40:16 84:10 84:20 132:11 152:6 296:7 366:5 decided 132:3 154:9 265:7,14 296:1,4 333:20 decides 38:2 deciding 365:19 434:7	decision 106:8,21 110:3 135:20 136:22 137:3,6 150:19 151:8 152:10,16 181:18 239:9 240:5 241:14 242:10 264:20 266:12 267:18,20 290:5 296:15 299:4 300:10,12,17 301:4,18 302:8 303:1,5 304:15 305:15 306:7,10 306:18,21 307:5 307:15 308:6 343:5 344:2 347:9 347:11,13 349:1,3 355:1 358:6 362:9 363:8 366:5 371:17 387:16 389:12,13 412:15 412:16 420:2 423:6 425:8 426:19 decisional 3:4 241:13 242:10 244:11 287:20 290:18 292:2 300:9 301:14,16 302:19 303:22 304:3 305:17 306:8,19 311:5 320:2 323:10 324:13 325:21 326:1,6 376:1 decisions 36:19 37:17 86:11 120:3 135:22 304:14 decline 351:1,3 358:15,22 359:2	359:18,19,20 360:3,7,8,9,16 361:5,8 362:2,6,11 362:20,22 363:1 363:16,17,20,21 364:6 365:9,12,15 366:1,8,16,18,19 declined 416:4 declining 363:11 decrease 330:20 330:22 416:20 defendants 1:7 6:8 deferred 402:12 405:7 defined 30:20 definitive 330:10 331:13 332:15,18 definitively 329:22 330:6,7 331:10 degree 12:9,10,14 13:15 14:6 del 381:7 delay 236:3,18 deliberative 345:20 democracy 103:9 413:22 democrat 307:4 democratic 28:9 demographic 132:15,16,18 134:7 137:7 359:20 360:8 363:1,4,6 413:20 414:11,18 demography 14:12,14,17 demonstrate 358:22
--	---	--	--

[dennis - determining]

Page 19

dennis 87:19,21,22	247:6,18 248:1,3,5	420:22 421:7,9,14	386:11
deny 297:9 380:13	248:17,21,22	422:4,11,12,15,22	describe 28:5
department 1:6	249:10,13,21	423:15,22 424:6	141:19 210:17
5:17 6:10,14 8:17	251:2,8 260:19,20	424:19 425:10,13	237:5 387:12
9:20 15:21 16:1	262:17,21 269:3	425:14,19 426:4	described 17:13
18:2,16 22:2	270:6 272:3,15	426:17,19,20	219:11 353:1
30:11,12 31:1,22	273:1,10,14 274:2	427:13,16 428:3,5	357:20
32:19 33:18 34:14	274:14 275:6,16	428:11 438:16,18	description 38:4,6
34:17 35:4 36:20	275:21 276:3,9,22	440:3	381:13
41:13 42:2,14	277:10 278:1,13	department's	desk 72:2 73:16
43:21 48:16 51:16	279:1 281:6	425:6 426:13	256:18,19,19,20
52:8,11 53:11	290:16 294:20	departments	256:21 257:3
58:5 74:22 75:4	295:11,15,18,20	42:12 51:14	342:5
75:11,13,22 94:8	296:1,6,8,10,11,11	depend 60:15	desks 73:13
97:4 99:7,10,13,15	296:12 297:1,5,10	201:11 202:3	256:16
101:1,13,15 104:5	297:17 298:3,20	depending 52:20	detail 271:17
104:8 114:2 124:9	299:3,11 300:7	143:9 356:16	312:22 313:16
125:9 126:18	305:11 309:7	359:20	381:20 383:11
150:12 153:7,16	319:20 320:20	depends 40:19	detailed 42:11,16
157:4 165:12	329:21 330:5	46:3 47:11 50:17	42:20 263:22
166:9,11,14,20	338:19,19 340:1	52:13 53:5 92:1	264:4,17 413:18
167:20 169:19	342:9 343:16	280:21 365:19,21	detailee 43:15
170:8 171:6,10	347:18 348:18	380:4	detailees 283:22
172:3,17,22	349:1 350:3,9	deponent 438:1	details 43:20
173:20 174:4	381:14,22 382:8	deposed 10:7	55:12 84:2
175:9,20 176:2,2	382:14,16,19,21	deposition 1:11	determination
177:1,10 179:6,14	387:20 388:7	2:7 8:10,14,20	199:18 343:1,20
179:22 180:10,13	391:4,14 392:1,15	10:5,18 11:6	345:4,14,15 393:2
180:18 183:2	392:21 394:7,15	56:17 62:14	428:2
184:2,20 185:2,5	395:13 396:13	287:11 335:21	determinative
185:10,11 186:3	398:18,20 399:1,4	336:2 435:19	330:9 417:21
187:19 188:9,17	399:12 400:3	436:5,7 437:4,6,10	determine 109:16
188:19 190:9	401:16 403:2	437:14 439:3	109:22 329:22
195:14 196:14,15	404:19 405:17	440:6	330:6,7 349:21,22
197:2,17,18	406:10 407:5,9,12	deputy 6:20 17:9	413:11 417:22
216:16 219:1	407:20 408:17	20:12 21:20 22:1	429:20 430:1
222:8 227:22	409:19 410:10,15	22:1,6,14 24:13,20	determined
237:17 238:5	410:17 411:2,9	26:8 33:8,10	264:13 333:19
239:3,15 245:5,12	412:4 413:3	35:13,14 36:8,17	413:10
245:18,21 246:3,5	414:22 415:3,22	57:5 92:13 93:9	determining
246:11,19 247:4,5	416:4,10 420:21	198:8 203:13	262:10 430:16

[develop - division]

Page 20

develop 45:6,21 46:6	310:10 401:16	disclosing 196:3	228:16,20 231:8
developed 46:7	directed 115:11	disclosure 195:21	283:22 290:22
developing 19:2	122:18 179:5	345:19	359:21 391:5,15
19:10 45:2,7,16	183:1 184:12,16	discourteous	392:2 393:12,16
105:16 150:2	185:11,16 285:10	279:15,22 280:7	399:8,13 408:20
development 44:9	347:21 348:3	280:20	discussing 104:7
developments	370:19,20 412:20	discover 431:5	133:4 142:3
119:10	418:19	discovery 435:17	188:10 231:2
dewhirst 6:14	directing 175:2	435:18	257:20
dgrant 4:13	429:19	discretion 70:14	discussion 21:10
dhs 183:5 184:19	direction 121:22	301:6 302:1	32:6 59:15 124:20
185:3,7 196:15	283:11 437:10	412:14	135:17 172:17
278:2,5 410:22	directive 392:15	discrimination 4:2	184:19 195:9
411:11,11 412:9	392:20	discuss 77:21	206:9 225:11,14
413:6	directly 36:6	98:19 99:1 100:13	225:18,19 230:10
dictated 413:3	47:11 49:20 50:2	100:21 101:21	236:14 252:1,6,11
difference 22:4	50:3 66:8 69:10	102:6 113:22	255:1 258:9
254:16	188:7 245:19	124:9,12 133:8	287:15 290:1
different 16:21	390:10 400:13,19	134:11 156:22	339:2 360:11
19:7 41:14 42:12	400:21 401:20	157:8 164:8	404:10 409:16
43:20 93:15 113:5	423:20	166:11 170:7	421:18
247:14 254:6	director 18:8 33:9	178:8 203:16	discussions 19:7
257:14,15 259:2	33:10,12 35:13,18	209:9,12 210:8	31:21 32:9 59:12
297:22 300:1	35:20 36:1 37:7	221:9,11 228:8,13	100:10 157:4
301:11,13 302:20	37:22 43:8 48:2	238:20 257:19	187:19 232:17
305:16 306:9,20	52:15 53:15,21	290:11 339:13	290:21 316:21
307:18 313:8	59:22 60:14,19	344:5,8 387:19,22	397:13
314:14 356:18	128:7 139:18	388:3,6,9 389:18	disinclined 359:15
differential 359:20	142:19 147:1	393:7,8 410:1	360:22
differently 19:19	148:1 162:17	discussed 26:7	dissimilar 417:13
332:13 334:2	203:13,20 204:1	89:9 97:11,16	distressed 162:17
358:1	237:15,19 281:7	98:21 99:4,19	district 1:1,2 4:14
difficult 261:2,11	386:11	100:2,18 102:7,14	8:18,19 13:3
359:9 360:21	directors 44:6	104:11 118:9,15	89:22 336:13
difficulty 307:15	disagree 305:12	124:14 129:20	349:11 381:6
dinner 125:19	305:14 306:6	133:17 142:4	420:9
160:18	312:11,13 313:4,7	144:1,12 162:8	distrust 330:15
direct 71:21 78:3	317:3,16 352:4	163:14,17 164:4	divine 168:11
99:14 179:13	disagreement	164:11 188:5	division 242:20
293:20 294:3	258:18	196:6 208:5	289:13 433:9
		209:14 225:9	

[doc's - earlier]

Page 21

doc's 214:7 doc.gov 6:18,18,22 document 48:6,8 48:12,20 49:3,8,14 50:1,4 56:5,7 62:6 62:19 63:2 64:12 78:8 82:15 87:11 93:17 94:3,6,16,19 108:11 114:10 120:19 121:9 123:14 137:20 145:10 158:22 159:8 164:17 167:5 182:12 189:10 194:14 199:19 200:5 212:10 215:17 218:5 219:18 220:5,8 221:18 222:3 224:14 226:16 227:1 234:19 246:7 247:7,8,10 248:7 248:20 258:15 259:7 309:14 310:5,7,9 311:6,17 312:7,9 313:2 318:7,8,9 320:1 341:16,22 342:3 343:9,14,16 347:13 358:14 373:3 375:5,6,7,8 375:8,21 376:5,16 376:22 377:16 378:22 384:9 documenting 137:6 documents 11:8 11:10,13 48:14,22 50:8 55:19 62:20 80:16 174:10	243:10,14 318:13 318:14 320:6,8 371:4 376:20 377:7 435:18 doing 19:18 31:13 40:12 42:5,6 44:4 45:4,18 47:12,13 117:17,21 150:16 186:17 193:1 266:21 300:21 307:16,17 325:16 367:17 371:13 418:20 425:1 doj 154:18 155:1 156:21 157:8,10 157:14 158:1 164:22 165:1 176:12 192:5,5,7 192:15,15 213:14 214:1,2 215:13 216:21 217:1,3,5 217:10,13,17 232:13,17,20 283:6 290:4 291:8 291:9,10 299:19 338:6 344:16 354:5,15 397:14 397:14 403:4,8,14 407:13 408:18,19 411:13 412:1,9,20 413:6 414:21 416:10 419:21 420:13 421:9 423:2 424:7 427:4 429:6,9 doj's 155:21 337:3 427:6 doj.ca.gov 5:20,20 domestic 50:2 donald 383:13	dorian 5:11 double 13:7 90:15 doubt 267:10 380:5 doubts 252:21 253:1 dozen 125:11 285:14 dozens 411:17 dr 238:10 312:20 314:3,3,5,5 315:1 315:2 316:14,14 318:3 322:18,18 324:4 325:10,10 432:19,20 433:8 draft 3:5,7 94:7,21 94:22 99:2,11 100:13 113:9 218:13 219:15 242:22 243:1,3,18 243:21 244:2 246:2,6 247:7 309:20 310:4,4 311:4,9 318:12,13 318:14 319:2,19 320:2,4,6,9,19 321:3 342:17 344:4 345:9 346:11 372:16 375:18 376:1,14 413:1 drafted 357:12 371:6 377:11,13 410:21 drafter 242:15,19 369:14,17 drafters 242:16,17 drafting 95:1 345:3,11 380:11 430:14	drafts 244:5 draw 69:5,7 331:15 369:4 384:22 drew 331:16 driving 224:12 285:4 drop 326:11 330:11,12 417:12 418:11 dropped 292:16 294:15 dspence 5:14 due 149:13 236:3 236:19 365:10 duly 9:15 437:7 dunn 101:22 137:12 218:18 219:3 222:22 288:15 310:1 325:7,8 369:11 dwkesq.com 4:18 e e 4:1,1 8:1,1 25:10 25:11 160:18 438:15 440:1,1,1 eager 236:19 earl 1:12 2:2 8:14 9:14,20 40:8 57:9 58:3,4,6,10 139:17 166:3 227:15 436:8 438:2,14 439:3 440:5 earl's 57:20,21 earlier 83:21 85:6 104:2 122:1 161:13 162:8 166:19 172:6 195:7 219:11 221:2 244:10 283:22 317:2
--	--	---	--

[earlier - enclosed]

Page 22

356:19 358:21 367:6 369:21 389:15 400:7 409:12 410:8,20 423:9 earliest 195:8 early 27:16 166:1 179:12 184:8 187:22 271:11,11 316:21 317:8 earn 12:20 earned 12:13 easier 365:8 eastern 84:16 86:19 141:20 143:2 easy 128:5 196:9 economic 47:1 50:3,20 51:1 219:5 economics 13:21 42:17 economist 43:2 edit 243:10,14,18 editing 345:12 edits 95:2,4,11,14 246:3,6 247:9 249:4 342:13 344:12 346:4,13 eds 48:17 education 13:18 14:8,11,18,21 15:2 educational 11:17 effect 152:16 237:12 effective 199:8,16 effectively 204:2 efforts 350:6 411:6 eight 234:7,10,12	either 11:1 23:6 50:9 52:22 124:4 246:8 320:8 386:13 408:18 416:8 eleanor 292:12 election 15:3,12,13 15:14 electronic 60:8 346:14 elena 6:2 elena.goldstein 6:6 eleventh 63:12 eligible 350:1 eliminate 333:5 ellen 36:22 56:20 57:4 87:19 92:12 97:15 else's 270:13 email 2:9,9,10,10 2:11,12,12,13,13 2:14,14,15,15,18 2:18,19,19,20,20 2:21,21,22 3:8,9 40:14,17 49:17 55:21 56:2,12,16 56:19 57:7,17 59:17 60:3,22 62:3,8,9,13 63:5 63:15 64:22 65:13 67:6,9 69:2,6 71:9 71:10,11,13,21 73:7 75:8 77:22 79:14 82:17 83:1 83:4,11,13,16 87:8 87:18 88:6,10,13 89:9 92:10 93:13 93:14 98:20,21 110:17,19,19 114:7,15,16,22	115:2,10,13,15 116:9,21 118:8 120:15 121:2,5,13 121:18,20 122:11 123:11 127:7,10 128:14 129:14 130:2 132:12 133:13 136:16,20 137:17,21 138:2,5 138:7,17 139:11 143:19 144:19 145:7,13,15,17,19 146:2,17 147:10 147:14,16,20,22 149:4,9,16 152:7 153:2 154:22 156:6,11,12,20 157:13 158:19 159:4,7,9,11,17 160:16 161:9 163:2,6,8 164:14 164:21 165:14 167:2,9 168:12 174:10 184:3 189:14 191:19 199:21 202:5 203:5,8 205:3,5,15 205:18 206:14,14 207:6,11 212:14 212:20 213:2,13 214:16 215:6,19 216:1 218:6,12 219:19 220:7,10 221:1,19 222:4,11 223:18 224:16,22 225:1,5,22 226:18 227:14 229:8,12 230:8,22 231:9,21 232:3 233:2 234:20 235:4,6,19 236:16,21 239:22	378:18 379:3 380:10 383:22 384:3,3,5,7,12,13 385:1,11,12,21 386:4,5,13,15,17 386:20,22 387:3,4 387:12,19,19,22 388:3,6,9,20 389:1 389:4,9,10,16,17 390:18,21 391:1,5 391:10,15 392:5 392:16 emailed 81:17,20 83:7 118:5,6 146:13 177:5 206:2 232:1 emailing 85:3,18 115:19 emails 117:20 156:13 219:11 259:22 371:4 373:6 376:18 emphasize 146:3 148:19 emphasizing 149:10 empirical 329:1,7 329:11,13 433:16 employed 437:13 437:16 employee 85:20 125:3 437:15 employees 30:11 31:1 employment 104:5 empty 411:20 en 90:6 91:3,11 92:8 enable 430:3 enclosed 439:2
--	--	---	---

[enforce - exhibit]

Page 23

enforce 265:11 294:22 enforced 192:17 enforcement 126:17 262:9 263:14 383:6 393:10,13 394:17 395:17 399:9 401:2 402:8 403:3 403:6,16 404:11 408:22 409:4 414:14 427:19 enforcing 192:13 277:11 entered 61:9 entero 381:7 entire 97:4 314:9 314:10,15 315:19 351:2 354:4 373:15 430:3 431:13 entirely 65:22 85:14 86:6 93:12 95:13 101:12 102:1 133:17 197:16 201:6 203:22 324:8 406:18 environmental 6:4 14:1,6 equally 144:12 era 385:5 388:19 388:21 eric 74:4,5 75:10 97:12 157:9 164:21 165:11,14 166:3,12 167:15 173:8,10,18 197:22 256:3,21 257:4 283:5 410:10	erosenberg 5:14 errata 438:7 439:8 error 285:13 350:10 352:15 353:2 354:10,12 354:17,19,20 355:7,21 356:2,4,9 356:12,13,20 357:6,11,14,19 358:1,3 361:11 431:14 errors 333:6 352:20 esa 43:1 especially 132:17 esquire 4:3,7,11 4:15,19 5:1,5,6,10 5:11,16,16 6:1,2,2 6:3,9,9,13,14,19 438:15 essential 120:9 essentially 18:15 41:9 44:2 establish 149:7 430:4 established 104:20 262:4 349:8 379:8 386:7 410:8 establishing 432:16 estimate 47:12 223:21 288:21 359:12 estimated 330:21 estimates 81:2 350:3 estimation 363:2 363:18 et 1:3,6 8:16,17 44:12 302:3 413:19 438:18,18	440:2,3 ethnic 138:21 139:9 140:10 141:13 ethnicity 362:8,11 evaluate 364:7 evanwell 240:5 evening 83:16 204:7 214:3 227:15,17 events 11:15 everybody 43:10 everybody's 42:5 evidence 330:9 331:14 332:18,19 367:12 evident 374:4 evolving 353:12 354:1 exact 55:9 100:10 133:12 135:15 136:4,7,13 155:4 169:12 178:18 237:3 244:18 314:1 exactly 126:21 187:14,21 188:2 189:19 209:16 217:15 227:13 245:15 253:20 278:10 343:11 352:7 371:5,14 examination 1:13 2:3,3,4,4,5 9:18 241:1 321:19 336:5 381:2 419:19 examined 9:16 438:3 example 19:18 43:14 44:3 50:12	52:7 53:1 349:13 362:8 exchange 55:21 89:11 93:12 133:14 165:14 205:4,5 220:10 233:8 292:14 321:16 exclamation 139:20 exclusively 51:22 52:2 excuse 259:15 284:6 420:8 422:14 429:7 execute 349:16 executive 48:18 281:7 exercise 331:2 exhibit 2:8,9,9,10 2:10,11,11,12,12 2:13,13,14,14,15 2:15,16,16,17,18 2:18,19,19,20,20 2:21,21,22,22 3:3 3:3,4,5,6,7,8,9 55:22 56:1,2 62:1 62:2,3 64:22 71:3 80:9 82:14,17,20 87:7,8,13,15 92:20 92:22 93:18,19,22 111:16 114:6,7,11 114:13 120:14,15 120:20,21 121:12 123:10,11,16 127:6 130:2 137:16,17,21 145:6,7,11 147:8 147:10 148:11 149:16 158:16,19 159:1 164:13,14
--	---	--	--

[exhibit - federal]

Page 24

164:18 167:1,2,5,6 182:4,7,12,13 189:6,7,10,11 191:20,21 192:1,2 194:13,15 199:20 199:21 200:2,12 204:21 205:3 208:21 212:11,14 212:17 215:18,19 218:6,10 219:18 219:19,22 221:18 221:19,22 224:15 224:16,19 226:17 226:18,21 229:13 232:15 234:19,20 244:16,18,19 293:1 309:3,15 314:7 317:19,20 318:2 321:14 325:22 326:1,5,14 329:18 372:15 373:3 374:19,20 375:2,15 376:12 376:13 378:17,18 378:22 379:22 383:19,20,21 428:15 exhibits 2:7 3:11 269:15 326:11 existed 41:8 389:17 390:18 expect 85:2 268:3 268:6,9 289:20 355:7 expected 81:1 355:15 expediting 204:13 204:17 expending 412:2 experience 13:19 14:9,12,19,22 15:3	42:13 185:12 282:13,18 307:2 307:12,13 433:19 experienced 343:10 expert 349:9 expertise 18:4 39:4 42:13 282:3 324:20 434:2 experts 324:16 434:3 explain 41:22 46:2 150:4 171:16 272:7 278:11 280:12 413:15 417:3 418:14 430:15 432:4,6 explained 177:12 272:14 279:3 358:21 423:9 explaining 152:11 241:14 explanation 181:1 277:22 344:15 382:14 430:22 431:20 432:5 explore 150:7 190:16,21 337:12 348:3 explored 374:3 exploring 135:20 151:2 176:22 177:10,16 178:10 178:22 180:7 exposed 301:22 express 344:20 expressed 82:3 207:21 348:7,9 389:16 expressing 160:4	extensive 40:21 71:9 316:20 extent 18:17 37:16 70:19 131:7 133:3 195:20,22 308:2 335:21 397:2 400:4 extra 276:16 extrapolate 368:6 extrapolated 352:17 357:6 extrapolating 368:12 extremely 144:6 144:10 eye 3:18 ezra 5:10 336:7 372:19 f face 124:16,18 279:16 359:3 410:15 facilitate 164:9 facing 257:2,2,4 fact 20:20 89:21 105:10 106:17 108:15,16,18 162:12 163:19 195:10 207:7 230:13 233:20 283:7 285:3,10 290:14 308:7 330:20 331:20 332:6 349:16 350:1,4,6,9 351:6 357:10,15 358:15 361:12 362:16 374:4 390:17,20 414:7 419:4 431:7 435:16	factor 350:11 365:13,16 417:21 factors 105:19 366:3,15 facts 186:21 factual 69:15 295:13,14 failed 162:19 360:13 failure 419:12 fair 43:18 204:9 217:21 226:13 270:14 272:6 288:6 309:17 323:2 fairly 47:15 135:6 289:16 290:7 303:18 312:17 350:10 357:16 407:2 faith 283:11 falling 291:15 false 301:20 familiar 17:2 84:2 126:2,4 127:22 128:3 138:20 396:16 faqs 66:7 far 311:8 351:11 351:19 361:11 420:18 fashion 275:18 faster 204:15 february 15:17 37:4,7 55:2 56:21 58:15 59:6,11 63:8 104:19 federal 34:9 185:12,15 283:2 307:3 381:5 387:5
--	---	--	---

[feel - formed]

Page 25

feel 185:1 407:2	273:1 279:17	211:2 256:11	follows 9:16
feeling 211:8	297:18 439:2	364:18 373:17	font 380:4
feelings 300:11	findings 328:20	fixed 43:22 44:2	forefront 64:20
feels 120:9	finds 70:8	flag 41:16,16	foregoing 437:4,6
fellow 77:9	fine 211:12 241:7	flexible 44:3	438:3
felt 184:19 185:3	274:17 307:13	flipping 375:3	foreign 80:22
190:15,16,20	344:22	floor 439:15	forget 31:9 427:2
199:7 343:17	finish 20:16 45:13	flyer 388:12	forgive 136:9
fewer 326:10	79:5 151:14 224:4	flynn 164:22 165:8	400:6
fidler 6:1	273:21 284:7	165:9	form 103:17 106:4
field 13:16	finished 197:19	focus 254:7 301:1	106:19 120:1,7
fifth 256:9	263:6	301:16 302:22	145:20 160:10
fight 388:14	finishes 194:3	304:2 308:9 317:7	166:15 187:1
figure 32:3 41:18	finkelstein 6:3	338:21 423:7	189:1 195:12
42:5 224:2 266:7	firewalls 31:4	focused 130:17	199:6 204:11
284:4 319:11	firm 9:1 12:4,6,7	242:2 356:1 357:3	225:21 252:17
file 101:2	135:19 228:3	358:5 371:11	253:8 255:9 258:6
filed 8:18 287:5,14	first 9:15 26:22	focusing 356:8	259:11 274:5
fill 328:4,15	30:2 33:17 34:10	folks 76:4 81:12	276:5 280:15
423:12	54:16 55:7 68:21	99:7,13 126:3	284:21 299:12
filled 37:13 327:9	69:4 71:22 81:14	279:1 283:8	310:7,9 326:20
327:18	82:3,8 84:3 94:5	289:14 313:19	327:3,4,5,6,8,12
filling 54:5	99:11 104:3,12	324:17 340:18	327:13,15 329:3
final 36:19 151:9	114:17,21 121:4	359:6	343:21 346:14
311:6,17 312:14	121:12 133:8,17	follow 23:3 28:8	353:9 372:11
316:22 317:9	150:10 180:4	28:10 30:2 40:10	381:18 383:14
319:3 321:10	181:2 187:5 189:2	59:20 60:22 61:2	393:4 396:10
373:16 374:12	195:15 196:10	61:5 70:17 89:8	404:15 405:13
376:22 389:19,22	208:21 235:6	152:13,21 154:17	409:1 410:3,6
429:14 433:10	242:22 243:1,18	154:19 177:17	412:10 417:17
finally 61:16	290:13 318:3	181:17 342:21	418:10 424:14
429:15,18 430:11	329:20 335:6	346:1,2 360:12	433:18
finals 318:13	336:9 339:8	361:3 372:2 399:3	formal 198:7
finance 6:15	341:15 342:1,16	411:14	239:4,5 296:3
financially 9:7	348:16 375:1	followed 165:15	309:8 347:10,15
437:17	385:1 387:8 429:3	following 64:3	formally 123:20
find 155:18 162:12	fisheries 18:4	115:20 206:8	format 320:14
162:21 163:19	201:20	242:4 248:6,8,18	372:8
181:9 208:13	fit 201:13,18	249:6,7 278:3	formed 106:2
224:9 266:9 267:5	five 158:7 178:12	285:9 303:19	110:8
267:17 269:14	197:15 198:13,16	390:21	

[former - gardner]

Page 26

former 17:1 18:8 25:5,13 123:19 227:21 forming 107:2,5 107:22 108:7,13 109:8 formula 351:16 431:1 formulate 150:5,6 formulated 370:5 formulation 110:2 forth 30:21 46:11 50:15 102:5 271:4 308:6 323:19 350:21 376:19 forward 218:3 265:19 266:9 350:12 415:4 423:7 436:1 439:8 forwarded 159:16 163:6 165:19 386:3 forwarding 159:10 163:11 forwards 165:17 found 66:2,4 79:21 110:18 261:2,11 297:2 foundation 116:14 117:6 118:12,18 122:7,21 134:16 134:21 140:7 142:12 143:8,17 161:5 163:5 201:1 206:6,12 235:18 286:7,16 334:21 380:8 384:16 390:3,12 392:9,18 407:16 408:1,4,7 412:11 413:8 415:20 422:17	423:4 424:15 426:2 four 98:7 178:1,20 188:3 256:6 271:7 277:16 370:14 fourth 58:16 fraction 371:13 frame 27:13 40:19 55:9 187:22 188:3 201:11 237:8 289:8 397:5 francisco 4:21 frankly 261:22 359:6 413:17 fraud 393:14 394:19 395:19 399:13 401:4 404:11 406:5 408:10 409:6 free 363:9 freedman 439:9 frequency 144:15 frequent 47:15 frequently 52:21 53:4 66:9,14,19 119:3,6 160:17 232:10 friday 65:1 73:8 75:9 216:11 217:19 front 18:10 82:21 87:15 92:20 94:1 111:16 114:13 120:22 123:16 137:21 141:18 152:9 156:13 159:2 167:6 182:14 189:11 194:18 200:3 204:22 212:18 218:10 219:22	221:22 235:1 292:19 313:18 318:5 406:17 417:9 frustrated 197:5 223:11,13 frustration 160:5 full 216:9 269:11 310:11 313:16 358:8 429:1 fuller 430:22 fully 70:5 254:9 261:16 419:8 function 41:11 45:1 53:20 68:9 76:22 208:19 functions 26:5,6 41:7 44:17 fundamental 95:19 96:10 244:20 258:17 funded 124:19 funding 95:21 further 108:11 149:2 203:14 216:4 262:5 312:7 374:3 389:18 391:8 413:9 437:14 future 20:18	118:11,17 120:1,7 122:6,20 130:12 133:1,21 134:15 134:20 140:6 142:11 143:7,16 144:20 146:18 148:21 158:17 159:20 160:10 161:4,15 163:4 166:15 182:5 186:7,11,16 187:1 189:1 191:20,22 194:3 195:12,20 196:7 200:22 202:19 204:11 205:20 206:5,11 206:19 210:5 211:5,10,19,21 212:12 224:4 225:21 226:5 228:9 235:17 240:9 246:20 247:1,20 250:5 252:3,17 253:8,17 254:12 255:9 258:6 259:11 263:19 268:14 274:7,10 275:3 276:5 278:16 280:15 284:17,21 286:6,15,22 292:21 297:13 299:12,14,16 301:2,17 303:2 304:5 305:1,18 306:12,22 307:20 308:11,16 311:14 316:9 320:11 329:3 331:11 334:20 336:1 340:13 341:10
		g	
		g 8:1 141:8 gabrielle 5:16 420:5 gabrielle.boutin 5:20 gardner 6:9 62:15 69:18 70:18 83:17 98:11 106:4 108:4 110:22 111:5 116:13 117:5	

343:21 345:18	214:7 219:1	287:3 291:17	215:15 231:1
353:19 366:20	227:22 231:4	292:20,22 293:4	240:17 250:17,21
372:19 380:7	232:21 233:10,18	297:20 299:15,21	266:8 267:17
381:18 384:15	233:21 234:2	299:22 301:10	286:4 335:9
390:2,11 392:8,17	235:13,16 236:14	302:10 303:8	341:12 350:12
403:10 404:15	236:17 237:6	305:6 306:2,16	352:22 355:15
407:15 409:1	245:20 246:16	307:6 308:3 309:5	360:13 373:5
410:3,6 412:7,10	247:6,9 249:18	311:19 316:10	380:16 411:9
413:7 415:6,9,18	258:10 298:11,15	317:22 318:18,20	419:13 435:7,8
415:20 422:5,16	325:16 342:7	320:13 326:3	436:1
423:3 424:14	397:5 400:8,9,19	329:6 331:5,7	goal 88:20 427:17
425:4,16 426:1,15	400:22 401:2,17	332:11 335:1,9,16	goes 88:20 152:16
427:8 428:8,16	401:21 402:16	344:3	205:12 423:7
433:18 435:20	403:1,6,15 405:11	getting 16:10,12	429:11
438:15 439:1	405:18	30:20 59:1 69:15	going 8:4,12 16:21
gary 396:9,14,16	general's 402:1,3	217:22 243:19	22:17 30:18 32:17
396:22 397:4,18	402:4,20 420:6	281:4 285:7	40:16 62:15 64:7
397:22 398:3,6,9	generally 46:7	318:13 319:2	66:6 74:12 77:8
399:7,8,13	60:12 65:18 68:15	427:17	78:7 111:2 128:17
gauge 57:20	76:8 307:12	give 50:12 56:11	130:17,19 142:17
gears 232:9	338:18 405:14	63:13 136:19	150:2 158:9 163:1
434:17	406:22	174:16 240:7	164:6 168:15
geary 115:3	generals 388:13	275:1 334:5,6	185:7 190:9
gender 64:19	388:17	355:2 363:3 366:6	192:18 197:17
84:18 86:18	generated 248:4	372:20 374:9	201:17 208:20
130:22 131:15	genesis 129:13	429:11 431:17	211:7,12 214:15
141:9 362:14	gentleman 34:19	given 30:16 40:13	217:14 233:21
gene 179:16 183:2	george 13:20	72:12 140:9 197:3	238:14 239:17
183:6 184:16,18	gersch 2:3 4:3	246:15 303:2	240:18 241:6
185:9,22 188:2	186:15,19 240:14	321:10 364:13	242:6 260:12
general 5:17 6:3	241:1,3 246:21	437:11 438:5	263:22 264:9
6:15,20 10:2	247:12 248:9	gives 429:14	266:11 267:9,13
16:22 46:6 86:9	250:3,6,14 252:9	go 13:6 22:22 25:2	267:18 268:16
95:5,6 99:18	252:18 253:12	31:8 39:8 46:11	271:8 281:11
100:14 101:19	254:4,18 255:11	64:22 67:5 71:3	282:11 283:10
127:18,21 128:2,5	258:8 259:14	84:1 92:22 117:20	284:12 285:12,16
128:11,18 167:22	264:2 268:18	142:8,17 150:7,8	287:1,10 288:19
168:1 183:15	274:8,18 275:11	152:20 155:18	288:20 289:10,20
188:21,22 189:4	276:11 278:18,20	158:8 169:19,21	289:21 291:1
189:21,22 190:3,6	280:18 284:18	181:13 191:18	299:6 302:13
191:2 196:11	285:17 286:9,19	200:11 204:21	303:15 305:22

[going - held]

Page 28

306:4 307:9 308:1 308:14,17 316:7 316:13 335:11 341:16 344:18 345:18 346:1 353:19 359:8,9,13 360:20 361:2 363:10 364:4 370:17 371:3 374:15 384:21,22 419:14 429:15 431:16,17 432:10 434:5 435:10 goldstein 6:2 435:7 good 8:3 11:2 43:3 44:8 90:13 127:2 150:9 211:6,9 212:9 241:2 249:14 254:9,20 255:2,8 258:15 259:8,9 263:4 265:8 294:9 308:16 336:6 351:15 381:3 413:20,20 420:18 420:19 google 109:19 googled 109:21 googling 110:9 gotten 110:11 246:8 government 3:2 78:18 81:22 125:3 126:16 152:12,18 153:11 154:4 158:5 185:13,15 204:16 205:14 229:2 239:8 262:12 263:5,10 264:4,16 265:9	266:22 291:22 293:2,7 304:13 307:3 330:16 335:20 347:4,6 359:5 governmental 25:16 192:7 258:22 262:2,7 263:17,21 412:4 grant 4:11 granular 275:7 granularity 272:20 273:2 granule 176:7 193:4 great 11:4,12 26:20 42:4 51:2 271:17 381:20 383:11 greater 272:19 313:16 359:2 365:17,18 366:6 366:15,18 grossman 4:7 ground 70:2,3 grounds 62:16 345:19 group 76:4,7 77:15 142:20 221:15 352:13 357:4 359:21 360:3,8 363:1,4 groups 54:15 132:18 guess 37:19 141:15,16 357:21 guy 175:4 271:1 271:14 277:6 285:16,19 guy's 283:3	guys 276:2 280:1 295:19 h h 25:10 440:1 half 12:7 21:7 49:11 111:2 328:6 328:7 331:1 361:9 366:12,18 367:3 hamilton 179:16 180:5 183:2,6 184:16,18 185:1 185:22 188:2 196:15 277:4,6,14 277:19 278:17,22 279:5,22 hand 56:7 240:11 318:17 430:14 handed 82:15 87:11 93:17 114:10 120:19 145:10 342:2 handful 144:4 164:6 handing 56:4 handle 381:22 handled 19:19 184:20 185:2 411:1 handles 18:2 handling 19:8 342:8 haney 269:5 hang 45:13 107:10 hankey 157:11 167:11,14 168:21 168:22 172:4,9 174:2 196:13 269:8,10,19,22 270:15 281:10 283:6 338:5,14 339:11 381:9,15	383:5 410:9 happen 84:5 152:14 306:17 307:7,11 331:16 337:17 happened 60:5 92:5 348:22 happening 86:3 happens 232:10 happy 62:18 66:22 77:11 78:16 162:20 203:15 302:16 308:2 311:12 hard 124:17 244:6 331:21 359:13,14 417:10,22 harms 310:20 312:1 315:3 head 31:9 204:2 266:6 365:8 416:15,17 418:11 433:8 hear 54:16,21 213:10 253:16 316:8,15 336:16 336:17 341:15 heard 68:21 174:4 287:4 335:2 397:1 397:2 hearing 19:1 20:19 26:19,22 27:15 28:8,16 29:6,10 31:16,20 32:8,12,22 33:4 142:17 147:2,5,6 148:16 288:12,16 335:6 heavily 52:11 held 8:20 84:21 321:20 330:11
--	---	--	---

[help - identifying]

Page 29

<p>help 34:1 41:18 82:2,6 164:9 195:2,7 236:7 260:10,22 261:1 267:5 284:12 311:10 430:18 432:16,22 helped 289:15 369:8,9 helpful 40:22 150:4 170:9 252:14 253:5 254:8 261:4 helping 34:19 helps 16:17 74:9 232:15 herbst 36:22 56:20 57:4,8 87:19 88:14 97:15 hereto 437:16 heritage 408:1,4,7 hernandez 77:2 97:12 198:1,5,6 209:3,9,13 220:20 256:6 hesitate 439:12 hey 272:11 273:9 273:16 279:6 280:1,7 283:5 284:2 hi 127:10 high 11:18,19 383:1 higher 411:22 418:3,5 highlight 79:8,12 79:15 80:18 highlighted 78:3,9 78:17 79:14 80:12 80:16 81:4,8</p>	<p>highlighting 79:20 81:21 highly 30:17 hill 12:3 22:11,16 32:17 88:17 89:6 hillary 115:3 hindrance 403:7,8 hire 21:7 47:4 hiring 124:18 hispanic 364:5 365:1 hispanics 349:13 363:6,17 364:8,11 365:10 366:2 history 307:10 hklaw.com 4:22 hoc 39:1 hold 106:12,20 151:14 321:18 427:21,21 holding 403:17 holds 340:16 holland 4:20 holmes 292:12 299:18 holtzman 4:19 homeland 179:6 179:14 180:1,10 180:13,19 181:14 181:15 183:3 275:16,22 276:10 277:2,10 279:22 382:16,19 honestly 10:10 179:11 200:14 364:13 376:19 377:2 414:17 hoping 168:12 hour 111:2 232:3 308:17</p>	<p>hours 49:10 house 48:4,8,16,19 49:4,9,15,21 50:9 50:11,15,16,16 51:4,7 74:5,7,12 74:17 125:19 147:2,5 148:1,15 167:18 173:12 283:9 288:1 291:21 388:1 391:16,20 393:8 395:9 410:12 household 319:9 households 328:1 328:9,10 330:22 333:12 huge 223:22 huh 31:11 67:8 79:1 103:3 123:15 123:17 127:9 128:15 149:19 151:16 159:3 213:7 229:14 231:11 280:9,11 292:4 293:22 326:13 328:22 339:12 341:7 358:10 362:21 377:5 human 307:10 hundreds 261:6 283:1 hundredth 112:21 hurdles 154:8 hurt 252:22 hypothetical 106:18 239:13 274:7,10 275:4 301:19 302:6,17 303:3,13,15 304:6 305:19 306:13</p>	<p>307:1,21,22 308:12 362:5 364:4 366:21 415:10,11 i idea 55:6 65:4 72:16 75:19 76:15 81:14 85:7,15 89:14 90:17 97:12 112:6,10,13 116:15 117:11,14 129:22 139:2 144:3 150:9 163:14 165:9 174:12 196:12 206:14 213:12 229:7 231:7 237:7 240:6 245:6,9 249:14 254:9,21 255:2,8 258:15 259:8 263:4 265:8 268:7,21 277:8 289:18 319:6 320:5 337:3,5 357:21 370:8 388:18 433:4 ideally 74:11 204:7 identified 66:12 99:5 155:20 172:8 239:22 345:17 363:20,21 identifies 206:1 identify 36:21 39:13 40:6 41:15 98:4 155:10 172:8 186:21 215:7 330:18 375:1 414:15 identifying 41:12 215:11</p>
---	--	--	--

identity 64:19 84:18 86:18 131:1 131:15 141:9 ignore 300:22 301:15 302:21 ignored 391:21 illegal 67:20 68:1 68:4 301:21 302:7 302:13,15 illustrate 155:1 157:14 332:3 image 384:13 385:20 391:6 imagine 32:14 60:4 163:22 233:15 238:19 346:13 370:13 371:9 immigrants 65:20 67:20 68:1,4 immigration 1:3 4:1 8:16 241:4 281:7 336:12 393:9,12 394:17 395:17 399:9 401:2 402:7 403:3 404:10 405:1 408:22 409:4 438:18 440:2 impact 105:18 330:2 impassable 20:3 impatience 217:22 impetus 337:1 implement 181:21 implications 319:18 320:18 importance 17:3 important 18:6 40:12 91:21 103:13 112:22	113:2,7 134:3,6 155:8 172:2 274:20 278:13,14 278:22 280:13 343:9,11 347:2 362:11 impossible 305:21 364:7 imprecise 158:3 imprecisely 312:20 improve 355:14 imputation 329:15 368:21 430:22 434:3,10,15 impute 351:8,16 355:18 368:17 423:11 430:6,18 432:16 inaccurate 353:8 357:17 358:4 367:20 430:1 inaccurately 353:10,21 357:13 inactive 13:5,11 inaugural 27:19 inauguration 26:1 27:21 28:1 31:3 34:12 inclination 276:19 inclined 272:4 276:20,22 277:1 include 17:12 91:12 96:21 97:2 107:7 146:7,11 151:5,19 298:5 included 26:6 81:18 85:19 95:22 103:21 105:8 106:9,11 130:18 131:15 132:3	155:2 157:15 192:16 202:9,14 202:18 203:1 208:3 244:21 347:9 384:12 includes 67:6 96:20 216:21 314:10,16 383:16 including 18:16 54:11 71:10 78:18 84:15 95:21 105:19 106:22 157:18 223:8,9 229:10 345:15 419:8 433:20 inclusion 10:4 21:15 164:10 237:17 239:11 251:1 329:22 365:10 incoming 19:3 incomplete 354:7 373:6,8 incorrect 357:10 425:22 430:17 increase 360:12 361:2,9 367:3 increased 419:1 independent 54:4 106:14 281:22 282:3 296:15 299:4,10 300:6 independently 349:3 indicate 69:3 81:10 276:7 indicated 69:14 243:3 372:7 382:20,20 individual 43:1 414:15 419:7	individuals 41:6 46:13 400:15 407:10 industry 378:1 inform 420:21 421:9 424:7,20 425:13,20 information 28:13 30:5,21 40:22 68:17 69:15 79:22 81:17 103:14 108:16 129:14 132:22 136:19 137:1,8,15 151:7 152:5,10 153:12 153:19 154:7 155:22 158:6 163:1,12 177:2,16 177:19 180:9,20 181:10,17 186:8 186:12 190:10 192:6,8,11,20 193:4 195:21 210:20 216:16 217:13,17 223:3,6 223:6 254:17 262:3,13 264:1,1,4 264:17 265:9,15 265:19 276:2,3,4,7 277:20 278:7 286:5 290:9 294:22 296:2,5,8 296:15,18 297:2,7 297:18 299:5 326:18 331:17,18 334:6,7 335:19 340:11 345:16,19 347:3 350:12 358:4 368:10 383:4 400:2 413:20 414:19
---	---	--	--

416:11 422:3 informative 281:20 informed 40:12 74:11 103:22 196:18 197:12 informing 397:3 informs 181:17 initial 150:18 178:3 254:2 337:1 411:8 initially 248:20 input 46:8,8,10 49:6 216:21 324:19 370:10 inquire 261:16 262:5,20 264:7 272:21 275:9 279:17 399:3 inquired 55:12,16 82:10 183:20 409:22 423:11 inquires 414:1 inquiring 390:15 inquiry 254:2 390:20 inside 387:20 inspire 224:5 institute 4:3 institutes 44:11 instruct 62:16 186:13 196:1 345:21 instructed 70:15 150:1,21 instruction 411:22 instructions 150:22 151:3,6 instructs 70:11 instruments 105:17 106:2	insurmountable 265:22 331:4 interact 47:9 52:18 53:14,17,21 interacted 47:14 189:3 interacting 48:3 51:10,18 interaction 30:22 50:15 51:3,6 52:10,16 53:2,7,11 55:18 99:15 196:10 382:9 411:3 interactions 195:3 381:9 interest 57:20,21 82:3 175:19 177:1 348:8 392:11 interested 9:7 58:11,19 59:1,5 64:18 69:14,17 144:7,9,11,13 170:10 175:18 190:4,7 192:11 202:8 275:13 298:21 397:15 412:1 437:17 interests 403:2 interface 41:18 interfere 8:9 interference 8:7 80:6 internal 99:8 internet 417:19 interrupt 11:1 interruption 165:20 291:14 434:12 interrupts 92:2	interval 356:15 introduce 221:6,7 383:19 introduced 10:17 336:7,9 introduction 14:13,15 introductory 303:2 investigate 252:7 252:7 254:17 337:8 410:14 investigating 108:11 investigation 201:19 317:6 340:20 invite 60:16,18 61:21 91:10,16 involve 286:14 involved 11:15 17:21 19:6,10 21:19 52:7,8,10 64:16 97:1 99:14 102:15 221:3 288:14 340:22 345:3 347:5 378:9 380:11 421:18 involves 68:9 98:16 220:19 280:10 286:20 involving 140:15 irrelevant 251:15 265:3 300:12 isolate 360:15 isolating 356:9 israel 77:2 198:6 issuance 290:17 420:13 issue 20:9 47:11 50:18 51:12 52:13	52:20 53:4,6 64:19 86:19 91:21 98:16 104:13 112:16,20,22 121:21 124:16 130:17 139:20 140:2,4 141:17,19 142:4,10 143:6,12 143:15,15 144:7 145:2 166:21 170:10,11 172:20 174:5 177:11 196:11 203:17 210:4,11 211:1 222:14 223:22 233:10 234:6,9 261:5 264:14 283:1 341:3 393:13,17 399:9 399:13,15,18,20 403:1 411:16 issued 242:9 244:13 292:3 343:20 420:1 issues 16:22 17:2 18:10,11,13 20:8 20:17 41:16 44:21 54:6 68:10 77:19 95:20 96:10 106:22 113:6 128:6 140:14 150:10 165:2 170:8,17,20 201:20 221:11 223:19 224:8 226:10 229:10 231:5 234:8 241:13 244:20 257:18 382:22 403:17 411:18 435:22
--	---	---	---

[items - kdk]

Page 32

items 257:14 iteration 376:22 iterative 321:15 izzy 97:12 198:1,5 209:1,3,9 256:6,19 257:2	jeff 400:9 jefferson 439:15 jim 57:18 jmf 1:5 job 17:4 38:4,5,6 42:4 43:17 48:2 58:16 63:12 68:9 70:4 150:8 164:1 252:14 253:5 266:7,20 267:16 268:5 john 5:6 59:18 236:1 309:18,22 395:9,14 410:13 410:14 439:9 join 16:4 25:4 117:12 joined 25:3 31:2 117:15 187:13,15 187:16 188:8,17 jones 377:17 jorgenson 1:16 9:4 437:3,20 439:14 jose 336:11 josh 98:6 joshua 6:9 438:15 joshua.gardner 6:12 journal 67:7 80:1 81:21 146:14 402:22 409:13 jr 6:19 judgment 429:5,8 july 121:16 122:12 205:18 206:3 209:22 june 94:12 98:10 99:3 101:19 111:15 113:10 179:12 187:16 188:15 195:6	244:13 271:11 341:9,17,19 346:4 346:12 jurisdiction 18:7 412:5 justice 5:6,17 6:10 94:8 99:7,10,13,15 101:1,13,15 114:2 126:18 153:3,7,16 154:1 157:4 165:12 166:9,11 166:13,20 167:20 170:8,19 171:6,10 172:22 174:4 175:9,20 176:2 177:1,10 181:10 181:13 184:2,20 185:2,5 186:3 187:19 190:3,6,9 196:14,15 197:2 197:17,18 216:16 222:8 233:5 237:17 238:5 239:3,15 245:5,12 245:18 246:3,11 246:19 247:4,5,18 248:1,5,17,21 249:10,13,21 251:2,8 262:17,21 269:3 270:6 272:3 273:1 275:6 278:1 281:5 290:16 294:20 295:11,15 295:18 296:1,10 296:12 297:1,5,10 297:17 298:3,20 309:7 338:20 340:1 342:9 343:16 347:18 348:18 349:1 350:3,9 382:8,21	388:7 398:18 399:1,4 400:3 410:17 411:2,9 413:3 415:22 416:4 420:22 421:7,14 422:4,12 422:15,22 423:22 424:20 425:10,14 425:20 426:4,10 426:13,16,20 427:13,16 428:3,5 428:11 438:16 justice's 299:11 300:7 305:11 409:19 421:2 justifications 415:16 justify 154:6 181:16 jyang 5:9
j		k	
j.d. 12:20 james 95:14 97:2 97:15 100:4 155:15 156:3,7 174:20 175:1,5 183:1 184:13 185:22 186:6 187:13,15 188:6,8 189:3 195:14 198:1,2 214:11 217:8 225:2,8,9 242:18 243:4,6 246:8 255:20 256:10,20 257:4 257:16 288:14 345:10 369:12 381:10 386:4,8,18 391:6,18 jane 157:11 january 16:2 19:22 27:16,17 31:20 33:14,15,17 33:22 34:10 35:5 35:5,8,9,17 36:10 37:6 39:18 124:4 124:5 198:19,21 309:21 317:3,11 319:19 320:19 321:2 369:5 jarmin 238:10,10 294:12 314:3,5 315:1 316:14 322:18 325:10		kansas 118:2 206:1 karen 1:16 9:3 10:17 101:22 137:11 218:18 219:3 222:22 288:15 310:1 325:7,8 369:11 437:3,20 439:14 kass 228:19 kassinger 227:17 227:20,21 228:1,8 228:12,16,19 229:1 230:17 231:5,8,9 kate 6:9 98:6 kate.bailey 6:12 kdb 222:15,19 kdk 222:19	

[keep - langdon]

Page 33

keep 40:11 60:7 73:1 76:8 136:3 197:11 211:7,12 218:2 221:2,5 304:9 318:13 keeping 45:3,17 45:21 74:11 196:18 335:21 435:18 keeps 73:2 kelley 4:15 101:22 137:12 218:18 219:3 220:21 221:3 222:22 288:15 310:1 325:7,9 369:11 kelly 395:9,14 kept 201:21 kevin 385:21,22 386:1,3 key 108:9 220:14 221:11 kind 48:14 84:3 103:14 175:19 194:22 203:12 279:15 286:12 334:13 340:19 371:20 kinds 50:14 knew 86:15 311:2 342:2 knight 4:20 know 10:12 16:21 22:21 23:7,12 32:4 40:21 41:15 43:3 52:9 55:17 60:21 61:11 64:4 65:2 69:13,16 72:19 73:21 75:3 76:5 80:2 81:7 90:13 93:15 95:10	96:7 97:3,16 100:1 101:9,10,13 102:13 103:20 104:10 109:20 112:4 114:5 116:4 116:10,22 117:4,7 117:15,17,22 118:15 120:10 123:2,21 124:22 125:1 127:2,16 129:13 132:5 134:3,7 136:3,6,7 139:4 142:15 146:20 150:10 156:3 160:2,3,7,8 161:17,22 162:5 163:6,15 165:8 167:17,19 169:12 174:17 175:12 176:12,22 179:17 181:16 187:14,16 187:17 188:2 190:15,20 191:3,7 201:2 203:12 213:9,16 214:17 215:4 216:22 217:5,17 228:14 229:11 231:20 233:6 235:10,12 238:13,22 245:15 246:10 260:6 267:11 268:11 269:12 271:2 276:22 277:16,18 279:11 282:6,13 283:7 286:17 298:9,16 304:18 304:20 305:20 306:3 310:3,5 315:10,16 321:8 322:19 323:8	324:18 327:21 329:10 332:3,10 339:22 340:4,17 342:15 346:8 348:17 350:4 351:20 352:20 354:14 357:18 362:15 363:7 364:6,10,15 365:3 365:6 371:11 374:6,11 375:8 376:21 377:2,12 377:13 378:11,14 378:16 380:3,10 381:8,19 382:18 383:2 388:16,19 389:22 390:22 391:3,14,17,22 397:12,21 398:5 398:17,18,22 402:14,15 404:5,6 405:16 406:12 407:18 414:3 421:17 426:9 428:5 431:2,12 knowing 27:12 260:15 261:3 267:22 281:14 435:22 knowledge 122:22 157:6 164:12 189:2 228:17 315:13 387:8 388:22 391:10 392:10,19 398:16 399:17,19,21 403:1 409:20 424:1 425:17 433:20 435:4 known 124:2 287:10 343:19	422:2,9 knows 47:2,2,3 285:21 kobach 116:20 117:9,22 118:3,4,5 118:6 119:20 121:13 122:12,15 122:19 205:4,6 206:1,18 207:5 208:22 209:10 210:3,11,16 kravitz 4:10 kris 116:20 117:9 117:22 119:20 121:13 122:12,15 122:19 205:4,6 206:18 207:5 208:22 210:3,11 210:16
I			
I 5:7 160:18 la 381:7 lack 116:14 117:6 118:11,18 122:6 122:20 134:15,20 140:7 142:12 143:8,17 161:4 163:5 183:14,17 201:1 206:5,11 235:17 286:6,15 380:8 384:15 390:2,11 392:9,18 407:15 413:7 415:20 422:16 423:3 424:15 lacks 334:20 426:1 laid 300:9,13,19 351:19 langdon 46:21 47:4 56:20 57:1,8 57:17 58:10,19			

83:1,15 87:18 88:13 89:4,12 93:1 110:15 200:8 200:12 201:5 202:6,16 203:4,8 204:5 langdon's 46:22 59:17 language 244:4,7 244:17,18,19 245:3,7,10 362:20 430:12 large 20:22 21:3,4 31:4 42:7 163:15 314:3 349:14 356:17 largely 20:20 41:10 74:10 102:4 110:3 142:7 203:18 larger 327:22 356:13 368:13 late 88:4 209:22 316:11 law 5:11 8:20 12:4 12:7,13,17 14:19 15:3,8,12,13,14 193:12,20 228:3 300:16,20 301:6 301:15 414:13 laws 15:5,7 lawsuit 11:15 287:5 359:7 405:22 lawsuits 80:17 287:7,14 lawyer 127:1 193:8,10 265:1,5 265:12 268:3 325:4,19,20	lawyers 5:11 13:21 lawyerscommitt... 5:14,14 lay 300:16 lays 301:5,13 302:19 303:21 lead 67:14 leader 23:7,8 leadership 23:8 44:9 162:21 224:7 leads 207:11 learn 271:13 281:6 396:20 learned 281:9 357:15 402:16 432:13 learning 402:18 leave 160:18 leaves 43:22 leaving 32:17,17 131:6 left 12:3 43:14 75:3 211:20 legal 3:18 9:2,4 52:3 150:13 154:11 155:11,12 172:7 220:14 221:11 239:19 258:21 261:14,21 265:22 266:9 267:3 301:3,18 303:4 304:6,17 305:2 308:12 340:7,14 348:13 legally 267:14 legislative 18:8 165:2 legitimate 155:1 157:14,21 158:1,3 180:19,21 192:15	304:12 les 160:19 lesser 366:6 letter 237:21 238:1,3,4,9,14,17 238:20 239:2 272:4 290:4 347:17 349:2 396:19 397:8,11 397:15,18 403:5 403:15,18 407:13 408:19,19 412:20 413:1 419:21 420:13 427:17 letters 385:7 level 175:19 176:8 177:1 272:16 275:8 294:21 296:19 357:4 403:19 416:5 422:14,14 423:2 426:17,18 427:18 levels 352:13 leverage 285:8 levers 284:14 leviathan 41:19,20 41:22 lexicon 273:17 liberties 4:7 liberty 6:4 lifecycle 47:12 203:16 223:20 288:21 359:12 light 350:11 limit 423:18 line 57:12,17,22 63:4,15 71:4,22 78:3,17 79:8,12,15 80:7,12,15,20 81:3 81:4,8,21 90:2 96:16 97:6 111:1	111:21 146:16 148:8 164:22 230:13 293:20 331:15 352:12 440:7 lines 294:3,6,10 link 66:12 208:9 208:10 linkage 86:1 lisa 203:5,9,15,17 list 22:22 129:1,4 132:14 220:22 369:6,8,10,15 373:15 383:1 listen 276:1 284:10 289:19 302:11 literally 282:22 411:17 litigated 194:7,10 litigation 6:15 249:2 342:8 343:10,17 344:17 410:18 litigator 344:17 little 17:19 31:13 75:20 225:9 247:13 253:2 254:5 259:2 282:21 290:10 301:11 313:7 314:14 332:13 336:18 356:18 382:21 lo 350:7 located 8:21 199:10,12 lock 275:8 loggerheads 304:8 logic 248:19
---	--	---	--

[logical - marked]

Page 35

logical 133:5 171:8 181:12 331:18 logistics 43:15 long 4:17 124:2 155:18 171:14 174:8 178:11 198:16 226:9 233:12 250:5 302:2 321:9 326:20 327:3,6,8 327:12 353:9 372:11 417:17 longer 74:20 115:8 look 57:11 62:8 80:5,8 92:19 105:5 127:6 130:1 147:14 148:7 171:5,13 174:3,18 180:12 203:1 211:17 215:15 220:2 229:13 233:22 234:2 237:2 261:9 264:14 273:5,15 276:16 284:14 288:2 304:4 315:19 328:12 331:18 339:6 341:5,10 351:12 353:4 354:22 looked 110:11 155:16 156:3 264:7 364:8 looking 117:18 143:18 155:19 179:4 180:6 181:3 181:20 236:15,17 237:4 326:18 355:9 362:19 371:3 378:21	385:17 434:7 looks 83:4 93:3 159:16 165:19,21 225:2 375:12 431:1 los 4:14,19 lost 287:9 lot 20:1,7 40:21 52:10 84:12 88:4 91:8,17 112:16,17 113:5 143:2 147:15 150:15 204:16 211:13 222:5 231:5 232:11 243:14 285:16 288:12 345:12 359:10 360:17,17,18 411:18 lots 230:22 243:10 347:4,5 360:21 362:15 366:14 432:22 louder 336:18 love 160:19 lower 132:17 lumber 201:13,18 lunch 205:20 211:6 lupe 5:1 381:5,7 lynn 1:16 437:3,20 439:14	majority 349:15 349:17 maker 267:20 305:15 306:7,18 307:15 308:6 362:9 363:8 366:5 makers 304:15 307:5 making 36:19 177:2 209:5 290:5 338:2 352:6 358:5 434:5 maldef 5:2 maldef.org 5:4 man 433:21 manage 41:18,20 managed 374:17 managing 44:20 mandate 140:17 manning 385:21 385:22 386:1,3,13 march 64:6,8 65:1 67:22 68:4 69:3,8 72:15 77:19 78:1 81:16,20 82:7,13 83:2,5,14,16 88:1 88:9,11,17 89:9 115:13 137:11 140:21 146:13 149:13 199:4 208:1 241:8,12,16 241:18,19 242:3,9 287:19 290:17 318:2 322:1,12 323:9,10,15 324:2 324:13 326:6 343:1,20 345:3,14 345:15 346:17,21 352:10 375:21,22 376:8 384:4 420:1 420:14 424:4	426:8 428:13 margin 354:12,19 354:20 356:12,13 357:14 358:1,3,3 361:11 margins 352:15,20 354:10,16 355:21 356:2,4,9,20 357:5 357:19 mark 55:22 62:1 82:14 93:16 114:6 120:13 123:18,19 124:2,3 127:10,15 127:16 137:16 145:5 147:8 155:14,20 156:2 158:16 160:17 161:3 163:18 164:5,8,13 167:1 172:7 173:22 182:3 189:5 194:13 199:19 212:10 215:17 218:4 219:17 224:14 226:16 234:18 292:22 317:18 325:21 353:10,21 marked 56:3,11 62:4 80:9 82:18 87:6,9,12 93:20 111:15 114:8,11 120:16,20 123:9 123:12 137:18,20 145:8,11 147:11 158:20 164:15,18 167:3 182:8 189:8 194:16 199:22 212:15 215:20 218:7 219:20 221:18,20 224:17
---	---	---	---

[marked - meeting]

Page 36

226:19 234:21 293:3 309:4,15,19 310:4 317:21 318:1,12 320:2,9 326:2,5 339:6 341:6 372:14,16 372:18 373:2,18 374:18,21 375:2 375:17 376:1,12 376:14,22 378:17 378:19,21 383:22 marking 62:6 marshal 406:5 marshall 405:11 405:19 406:9 mary 157:11,11 167:8,10,13 184:11 185:22 188:1 269:13,17 269:22 338:5 381:9 410:9 maryland 4:2 89:22 90:2 91:11 381:6 mason 13:20 massachusettes 4:4 massachusetts 1:15 6:10 8:21 438:16 masse 90:6 91:3 91:11 92:8 massively 162:18 matching 369:2 material 232:7 359:18 360:2,6,7 360:16 361:5,19 362:2,20 363:1,11 363:17,22 365:11 365:20 366:4,7,14 367:4	materially 358:15 358:19 361:2 363:12 materials 72:12 92:9 105:8 math 365:5 matt 110:22 matter 8:15 16:22 18:1 22:4 37:20 52:13 68:10 168:18 179:4 193:17 194:1 203:2 204:10 220:17 229:8 230:13 231:1,19 233:22 237:4 266:10 290:8 342:11 400:13 407:3 matters 19:17 22:2 31:22 32:9 40:6,13 51:20 102:16 119:4,8 124:10,13 411:10 matthew 5:16 6:2 10:1 164:21 165:8 165:9 matthew.colang... 6:7 matthew.wise 5:20 mcannon 6:18 mcconnell 23:8 mchenry 174:20 175:5 177:22 179:8 184:13,14 185:22 196:14 270:20 271:21 272:2,8,11,22 273:4 275:12 276:21 278:4,11	278:17 281:4,5,11 281:14 282:20 284:3,11 285:4,8 381:10,17 382:10 382:15 383:3 410:13 mchenry's 175:1 175:13 281:22 410:14 mean 14:5,15 15:7 20:11 21:15 29:19 30:14 32:2 39:2 42:1 44:2 49:22 50:12,17 52:1,6 75:21 77:5 91:4 92:1,12 99:12 109:15 111:1 124:14 128:1 130:11 135:19 137:3 139:4 148:20 149:22 152:3,9 155:12,17 159:5 174:14 183:17 185:20 187:8 193:9 197:3 214:20 223:22 241:10 243:11 245:15 261:12 271:6 272:16 278:16 288:16 304:13 330:7 331:10,13 332:7 344:21 356:8 357:21 358:19 361:4,6,10 362:2 389:19 390:19 409:12 411:8 430:21 meaning 15:9 21:17 39:11 108:10 339:10	means 16:14 53:3 70:14 150:1 185:21 224:12 329:8 354:10 429:20 meant 57:21 152:4 222:19 243:16 media 8:13 111:6 111:10 158:12 211:22 212:4 250:7,11 308:18 308:22 380:17,21 389:14 390:6 402:16,17,19 meet 23:13 38:11 39:8 54:8 90:18 90:19 91:12,21 92:8 98:19 101:16 124:6 125:20 170:15,16 313:19 314:2 421:2,11 meeting 2:17 11:9 16:13 23:17 32:12 32:18 33:2 38:14 38:20 39:3,5,6 40:9 60:13,18 64:2 71:17 72:13 91:15 92:15,17 97:22 98:1 121:18 139:18 156:21 157:7 161:10,13 169:11 170:2,21 171:14 172:12,16 173:2,16,20 174:8 194:15,22 195:6 196:5 201:21 202:1,12,15 220:11,12,14 221:9,12 270:9 314:4 322:8 323:1 323:12 324:1,4,12
--	---	---	---

[meeting - minute]

Page 37

338:14 397:13 398:13 421:5 meetings 17:21 19:1,13 22:8,11,16 23:12,15,20 24:12 25:21 26:11 38:10 38:11,22 47:17,21 54:2,4,11 60:10 61:13,19 90:14 91:17 102:3 161:19,22 162:8 166:11 200:14,21 201:4,8 221:14 322:10,11,22 323:3,7,13 398:15 398:19 399:2,5 member 15:17 22:19 23:1,19 123:21 406:14 members 16:21 17:3,22 23:5,14 24:13,14,18,22 28:8,9,19 30:7,10 31:7 32:19 53:14 53:17 memo 2:11,16,16 3:3,3,6,6,8 40:18 41:2 93:19 94:21 94:22 95:1,2,4,12 95:15,17 96:8,13 97:18 98:9,10,15 98:20 99:2 100:13 101:2,19 104:16 107:12 110:17 111:15,19 113:10 113:19 136:22 137:4,5 174:17,19 179:17,19 182:7,9 182:16,18,20 183:1,9,12 184:10 184:18 185:17	187:8,18 189:7,18 191:9,12 213:22 215:12 216:9,10 216:19,20 217:14 217:16 218:13 219:10,15 223:17 232:13,20 233:4 237:16,19,20 245:3,4,13 269:15 300:9 301:5,14 303:1,12 305:5 306:19 309:3,18 310:16 311:5 312:21 313:16 315:19 317:3,20 318:2 319:14,20 320:20 321:2 322:1,12,12,20 323:9,10 324:2,13 339:2 346:17 351:19 352:11 353:1 355:1,22 357:9 358:2 366:3 367:3 370:3 371:17 372:16 374:20 376:14 410:20 420:1,2 428:14 432:9 memoranda 259:20 memorandum 3:4 241:13 242:10,13 244:11 245:14 246:14 247:17 248:2,15 249:3,15 249:22 287:20 290:18 292:2 301:16 302:19 303:22 304:3 305:17 306:9 325:22 326:2,6	341:6,8 343:19 344:1,5 345:17 346:5,12,18,21 347:1 350:20 420:14 memorandums 41:13 48:17 memorialized 339:1 memory 77:8 179:2 288:3 295:6 371:22 memos 40:15 422:13 423:1 432:21 433:3,7 mena 84:17 140:19 141:4,17 141:19 144:11 mention 173:4 257:21 mentioned 17:5 19:15 21:19 25:12 28:2 35:12 40:3 46:13 83:21 86:2 86:8 97:18 102:21 146:22 172:6 173:2 196:20,21 197:16 210:12 226:7 236:10,13 239:21 257:21 271:9 289:14 386:14,19 409:14 413:16 mentions 223:9 message 71:22 114:18 138:14,15 139:16 145:3 152:22 180:6 231:12 met 9:22 11:7 22:19,22 23:2,9,16	124:3 125:14,15 169:2,3,8,18 171:3 171:15 173:8 174:2 184:11 187:22 322:15 338:5,8 339:13 method 329:11 methodology 14:9 methods 329:16 michael 6:13,19 100:1 microphones 8:5,9 mid 3:18 middle 84:16 86:19 141:20 143:2 429:13 midnight 28:20 mike 95:7 97:2 98:6 246:9 millar 404:2,5,6 404:10,20 millar's 404:22 million 21:8 327:10,11,16,18 328:1,11 333:11 351:9 361:9 364:15,17,18,20 364:22 365:3,6,7 368:17 423:13 millions 328:16 364:11 mind 141:14 266:16 mine 257:4 minor 14:2 minority 349:11 349:12 minute 9:22 48:1 68:20 146:22 150:21 158:7 205:1 289:14
---	--	--	--

[minutes - never]

Page 38

minutes 171:15 178:12 218:19 250:6 mischaracterize 425:6 mischaracterizes 108:5 210:6 247:2 247:21 253:18 316:22 miscommunicati... 236:3,19 misinformed 285:2 missed 12:12 missing 332:12 misunderstanding 316:6 mo 406:14 models 351:9 modified 177:18 moment 58:5 220:2 monday 33:20,21 34:1 218:18 money 419:2 monitor 46:14,17 monitoring 45:1 month 179:9 271:5,12 monthly 47:20,22 months 100:11 121:22 125:6 146:6,10 151:4,18 159:13 166:8 177:7 183:22 184:4 198:18 206:9 209:21 211:2 234:7,10,12 234:14 347:7 morning 8:3 38:17 166:1 213:4 246:1	246:17 247:16 248:14 324:5 342:5 motivated 113:4 move 331:5 415:4 moved 44:5,12 188:21 moving 168:17 218:3 265:19 multi 375:8 multiple 48:21 290:15 322:21 323:3 multiply 431:10 431:16 mwalsch 6:22 myers 228:2 mystified 146:5 151:17 159:12 177:6 318:12	nations 413:16 nationwide 366:12 naturalization 413:19 nature 381:20 near 94:11 199:9 nec 50:16,22 necessarily 45:2 45:16 69:5 86:1 119:18,21 154:16 268:4 276:16 281:19 314:9 332:7 369:16 necessary 152:5 152:10 177:17 331:19 342:20 430:7 need 39:6 40:20 50:6 57:20 64:12 84:11 105:5 106:7 127:11 128:19 129:8,8,14 153:2 153:11,22 154:6 154:10 155:1,7,21 157:14,21 158:4,5 176:8 180:11 192:15,20 193:4 220:2 236:2,18 240:3 254:16 258:22 261:7 262:3,4,7 263:5,10 263:17,17,21 264:1,8,14 266:4 267:11 272:12 273:12,14 274:9 274:15,21 276:2,2 276:3,7 278:6 294:8 296:5 297:8 333:1 347:12 351:12 365:14 372:19,22 400:2	413:11 415:22 needed 15:7 37:17 46:9 59:10 86:14 153:6 156:16 166:8 176:5,8 181:8,22 183:15 247:8 248:3 249:2 264:4,16 279:14 294:22 296:8 344:16 416:5 needing 392:6 needs 84:1 157:17 157:22 158:1 253:10 258:19 negative 319:18 negotiating 274:16 negotiations 201:13,17 neither 37:11 67:11 358:12 416:9 437:12 nelson 23:16 neuman 123:18,19 124:2,3 127:1,3,7 129:10,21 130:11 131:11 132:1 155:14,20 156:2 160:17 161:3,20 163:18 164:8 172:7 173:22 neuman's 130:1 never 15:12,13,14 112:10,13 118:4,6 122:14 123:7 152:12 164:11 171:22 175:7 185:9 207:21 255:1 258:14 259:7 271:16 272:11,12 279:3,5 279:8 281:9 291:4
--	--	--	---

[never - objection]

Page 39

291:5,12,13 298:7 307:7,9 315:7,8,9 315:12 316:2 320:7 324:12 335:2 349:16 364:7 385:10 387:14 392:20 400:21 406:4,9,20 408:3,6 409:16,21 409:22 419:11 434:22 nevertheless 350:14 352:1 new 1:2,3 4:1,3,7,8 4:8 5:12 6:1,5,5 8:16,19 10:2 76:5 178:13 241:3 438:18 440:2 newman 124:21 133:10,19 134:12 135:5,10 136:2,6 136:10,19 156:10 162:1 164:5 newseum 115:20 nice 77:9 121:18 night 12:17 28:20 73:8 75:8 83:7 88:4 117:3 128:19 nine 198:18 234:7 234:10,12 nist 43:14 44:13 niyati 5:5 nom 27:3 nominated 27:3,5 27:9 nomination 27:2 28:7 nominee 16:17 18:14,21 20:10,11 20:11,13 21:11,20 22:2,6,18 24:13,20	26:8,9 28:11 nominees 16:18 17:6 noncitizen 65:5 353:8,22 367:7 414:18 418:5 430:6 noncitizens 67:2 85:19 208:3,6,11 208:14,17 332:6 353:9 367:13 414:7 416:22 418:3 425:22 430:2,18 431:7,11 431:16 nongovernmental 53:22 nonresponders 432:17 nonresponse 360:12 361:3 nonresponsive 331:6 nonstop 160:20 nope 10:8 77:4 112:12,15 197:20 259:19 270:19 normal 290:1 normally 71:12 91:14 277:12 318:14 north 84:16 86:19 141:20 143:3 336:13 northern 420:9 northwest 8:22 439:15 norton 292:12 293:21 294:10 298:18 299:7,18 300:3	note 8:5 128:13 130:21 318:11 375:17 380:9 409:12 419:11 423:5 noted 9:9 notes 172:14 211:17 notice 1:14 92:12 130:14 203:14 321:1 387:4 noticed 304:13 notices 283:2 notification 2:17 57:19 58:20 61:6 64:16 84:1 87:3 88:22 130:3 140:20 194:16 195:1 notifications 86:10 88:17 89:5 notify 59:8,10 84:8 127:11 129:8 noting 132:9 notion 54:16 68:21 notionally 37:10 notwithstanding 70:16 401:18 november 15:16 15:19 16:7 27:6 27:10 nrfu 366:13 367:3 nshah 5:9 ntia 44:12 nullify 302:8 number 2:8 14:2 64:13 81:11 111:7 111:11 147:9 158:13 163:16 178:18 191:20 201:20 209:21	212:5 223:18 229:9 250:8 308:19 309:1 327:22 328:9,10 330:22 332:21 345:6,6 355:18,19 360:12 364:5,10 380:18,22 384:2 417:12 428:20 431:6,9,17 numbered 62:7 numbers 72:2 364:8 numerous 226:10 229:10 244:1 nw 1:15 3:18 4:4 4:12 5:2,7,12 6:16 6:20 nyclu.org 4:9
o			
o 8:1 25:11 141:8 o'melveny 228:2 oag 235:12 oath 9:6 object 62:15 345:18 objected 69:22 objection 69:18 70:9,16,17 83:17 98:11 106:4 108:4 116:13 117:5 118:11,17 120:1,7 122:6,20 130:12 133:1,21 134:15 134:20 140:6 142:11 143:7,16 144:20 146:18 148:21 159:20 160:10 161:4,15 163:4 166:15 186:7,12 187:1			

[objection - okay]

Page 40

189:1 195:12,20	obstacle 331:4	173:16 188:20,22	48:11 49:3 55:15
200:22 202:19	obstacles 261:14	189:4 196:11	55:18 56:19 57:11
204:11 206:5,11	obtained 352:14	198:14,17 199:9	58:6,18 59:3
206:19 210:5	357:5	199:11,12 200:8	61:18 63:7,11,22
225:21 226:5	obviously 23:7,9	201:7 214:8	64:10 65:5,11,13
228:9 235:17	36:18 97:14	216:12 232:21	66:18 67:6,9
246:20 247:1,20	110:19 181:2,11	235:13,16 245:20	69:16 70:6 71:8
252:3,17 253:8,17	183:19 213:1	246:16 247:6,9	71:15,21 72:17,20
254:12 255:9	249:11 325:10	249:18 255:15	73:12 74:4 75:13
258:6 259:11	365:2 370:21	258:10 281:7	76:16,19 77:12
263:19 268:14	371:17 373:16	283:21 310:6	79:13 80:5,19
274:7,10 275:3	410:18	325:16 342:7	81:7,13 82:12
276:5 280:15	occasion 52:17	377:21 378:7	83:15 84:4 85:1
284:17,21 286:6	53:16	386:1,2	85:16 86:17 89:12
286:15 297:13	occasionally 198:1	officer 437:4	89:21 90:3,9
299:12,15 301:2	occupied 411:10	official 36:18	91:10 92:4,7,19,22
301:17 303:3,4	occur 92:17	295:3	93:16 94:9,21
304:5,6 305:1,18	398:15	officially 39:21	95:3 96:18 97:6
306:12,22 307:20	occurred 280:17	officials 37:18,19	98:9 99:9,12,16
308:11,12 329:3	298:10 397:2	90:4,19 96:2	100:18 102:2
331:11 334:20	398:11,11	111:20 112:2,7	105:6 106:7 107:8
340:13 343:21	occurs 308:5	113:11,13,16,21	109:12 110:5,21
366:20 380:7	oceanic 44:4	245:1	111:19 113:9,18
381:18 384:15	odd 103:22 104:9	ogc 99:20 101:10	116:4 120:12
390:2,11 392:8,17	offered 432:5	187:15 219:12	121:7,10 122:4
404:15 407:15	offers 301:1	oh 148:7 159:6	125:5 128:10
409:1 410:3,6	offhand 269:12	191:22 309:19	129:10 131:14
412:7,10,11 413:7	office 1:14 5:17	318:18 328:17	132:7 134:11
415:6,9,18 419:4	6:14 8:20 33:18	okay 10:9,14 12:9	135:8,14 136:5,15
422:5,16 423:3	35:21 37:8 38:1	12:16,22 13:8	138:19 139:16
424:14,15 425:4	41:3,8 42:10,15	14:8,18 15:6,16,22	141:19 143:1
426:1,15 427:8	43:5,8,19 44:16,20	16:3 18:18 19:9	144:6,10 145:12
428:8 433:18	45:6,20 46:4,5,14	19:15 21:6,14	145:15 146:1
objectionable 70:8	47:6 49:18,21	23:11,13,20 24:5	147:13,15,22
objections 70:7	50:10,16 52:15,22	24:12 25:22 27:5	148:11 150:11
286:22 425:16	53:21 57:2,13	27:14,17 29:3	152:2,17 155:16
objective 28:21	58:7 75:14 95:5,6	30:22 31:6 32:5,7	157:3,13,21
106:18 266:3	99:17 100:14	32:11,16 33:6	158:16 159:9
267:1	101:18 127:18,21	34:4,8 35:12 36:9	161:9 162:7 163:2
observe 229:6	128:2,4,7,8,11,18	36:12,16 37:6	164:2 166:19
	169:3,8 173:7,13	43:4 45:5 47:4,22	167:17 168:9

[okay - p.m.]

Page 41

171:2 174:13 175:5 176:19 177:21 178:5,13 178:16 179:7 181:14 183:17 184:17 186:5 188:10 189:5,5 191:8,18 195:2 197:11 200:7 202:1,5,12 203:4,8 204:9 205:3,11 209:20 210:2 213:2,10 214:3,15 215:2,11,16 216:4 216:8,19 218:12 218:16 219:17 220:4,5,12 221:17 227:1,12 229:13 230:16 231:22 235:3,14,22 237:14,22 239:1 239:14 241:5 242:15 244:8,8 250:2,18 255:6 256:13 257:9 258:9 259:17 263:16 274:19 276:17,21,21 287:7,13 290:19 292:6 293:12,16 293:19 294:4 298:1 300:19 308:4 309:16 311:11 312:16 313:22 314:22 318:9 321:1,4,10 323:6,16 328:18 334:12,17 335:9 336:10,15,22 341:12 342:12 367:12 373:20	374:18 379:17 382:12 384:8,10 384:11,21 385:17 385:19 386:3,12 386:16,21 387:2 389:3 394:4 401:1 401:15,22 406:20 407:9 408:16 415:14 416:3 418:8 419:13 420:11 421:8,20 424:2 425:19 427:3 428:13,19 428:21 429:4,17 430:15 431:12 434:17 435:5 old 146:6,11 151:4 151:19 159:13 166:8 177:7 184:4 omb 52:6 154:6 onboarding 34:21 35:1 once 103:21 150:13 209:14 211:17 247:22 248:19 297:15 322:15 347:10 371:20 410:22 411:13 ones 43:9 332:1 405:22 ongoing 84:19 online 110:11 op 48:17 open 256:16 257:1 289:16 335:21 435:19 operated 197:14 operates 204:16 operation 124:15 126:1	opinion 207:21 428:6 429:13 432:19 433:6 opinions 433:3,12 opportunity 130:9 130:11 131:9 132:2,8,10 133:20 135:21 285:5 oppose 435:20 opposed 45:21 318:13 350:18 opposite 265:20 opsp 283:19 option 352:11 353:18 423:9 429:5,8,12,12 435:21 options 368:20 422:13 423:1 oral 1:13 40:14 71:14,17 orally 9:10 71:7,8 order 10:19 28:11 90:14 109:22 129:11 152:14 154:19 155:9 181:21 217:13 239:7 282:19 327:9 orders 48:18 ordinarily 68:16 organization 12:5 125:1 192:8 organizing 57:8 orientation 64:18 84:18 86:18 130:16,22 131:14 141:9 original 180:14 185:6 245:3,4 346:11 384:12	439:4,8 os 57:12,13 ought 105:8 outcome 9:8 437:17 outlined 107:1 175:18 181:22 239:7 319:19 320:19 366:3 outlining 214:1 outreach 419:1 outset 272:14 outside 23:14 53:22 54:8,14,15 77:22 91:20 100:5 100:14 139:5 255:15 325:11 393:9 406:21 407:9,13,19 409:15 410:18 outstanding 435:17,22 outweigh 304:11 363:22 overall 359:19 overcharacteriza... 234:13 overlap 338:20 overrun 162:18 oversees 42:18 oversight 3:1 291:22 293:2,6 overstates 312:6 overview 59:19 60:2
p			
p 4:1,1 8:1 p.m. 73:8 83:5,14 116:1 128:14,18 203:9 212:1,5 235:8 240:19,22			

[p.m. - person]

Page 42

250:8,12 308:19 309:1 335:12,15 380:18,22 419:15 419:18 435:11,14 436:6,7 p.o. 5:18 page 2:1,8 66:9,14 78:4 80:8,9,12 88:21 121:7,11,12 127:8 200:11,12 202:6 205:8,10 208:10,13,21 209:6 235:6 293:20 318:4 329:18 352:10,10 353:4,18 354:10 358:8 384:8,9 428:19 439:4,9 440:7 pages 438:3 panel 406:17,21 paper 80:3 172:11 259:18 349:15 390:6 papers 402:21 paperwork 34:20 154:5 302:3 paragraph 57:16 130:8 132:12 182:22 183:8 310:11 321:13 322:1 323:20 329:20 339:8 358:8 429:1,3,11 429:14 433:17 pardon 156:8 227:10 park 4:15 377:20 377:21 380:5 part 13:22 21:8 30:13,15 68:8	76:3 95:21 110:6 116:21 152:11 153:1 159:5,7 215:9 229:17,18 244:21 248:16 249:7,8 273:17 279:19 285:13 296:16 297:21 369:5 375:7 421:4 participate 19:12 particular 18:3 37:20 42:13 44:22 64:8 92:6 170:20 252:20 261:18 266:10 310:4 314:19 360:3 369:15,22 385:13 387:3 391:10 411:16 particularity 33:5 particularly 28:9 35:10 84:6 261:8 344:21 412:1 parties 1:19 8:11 118:21 437:13,16 partitions 256:22 257:7,8 partner 12:3 party 9:6 125:7 192:12 pass 30:2 174:22 passing 218:13 pay 34:6 308:8 paying 164:1 pending 84:21 86:16 people 16:10,12 20:3 30:18 31:12 41:4,5 42:3,9 43:5 43:19,19 44:20 47:2 63:21 65:3,6	84:17 91:6,9,11,20 102:5,22 107:15 108:18 131:1 150:16 152:12,15 176:5 192:10,19 197:15 202:7 204:14 211:14 224:10 244:1,3 255:17 258:10 266:22 273:9 281:13,20 282:14 284:10 289:12,15 322:8 323:17 325:11 327:10,11 327:16,19 328:3 328:16 330:13 331:18 332:4,8,21 334:4 345:7 349:14,18,22 351:16 355:4,8 360:13,22 362:16 362:19 363:5 385:3 388:15 407:18,19 410:17 414:9 417:12,16 418:8 421:21 430:19 431:3,6,10 431:15 433:20 people's 359:4 percent 224:1 328:6,7,15 331:1 332:4,6 353:2,6,11 353:22 354:13 355:2,4,5,8,11,17 357:12 362:6,10 362:22 364:6 365:1,9,15,17,17 366:1,12,18,19 367:3,7,20 369:1 414:7 416:22 417:15 425:21	431:3,6,8,11,14,14 percentage 108:17 351:4 361:18 430:7 perception 143:10 414:2 perdue 52:12 perfect 11:3 perfectly 264:11 302:8 434:6 period 30:14 31:19 32:7 34:7 34:17 55:11 96:7 147:1 179:7 197:12,14 262:15 271:8 277:17 283:16 290:4 341:2 369:4 383:17 419:21 420:12,20 permit 429:22 perry 4:7 person 16:17 43:14,17,22 44:1,4 44:10 48:5 76:7 77:5,7 90:5,20 91:12 92:8,13 104:3 125:14,15 153:16 161:7 169:18 171:3 173:9 179:20 183:5 184:11 203:14 213:16 214:18 215:5,7,13 266:21 267:6,17 282:20 283:13 285:9 295:4 339:13 382:5 391:9,12 396:18 397:22 410:16
--	--	--	---

[person's - politicals]

Page 43

person's 179:15	physically 34:13	218:6 219:19	275:12 292:17
personal 167:10	pick 8:6 431:5	221:19 224:16	294:17 315:1
205:17 262:5	picture 77:14	226:18 234:20	316:2 332:2
266:10 300:11	351:11 354:7	241:4 293:1 309:3	342:12 361:18
personally 68:2	piece 224:11,12	317:20 326:1	362:5 371:18
297:9 400:12	pine 4:16	372:15 374:20	374:1 408:18
personnel 21:1	pitfalls 67:19	376:13 378:18	411:6 414:12
32:3 34:21 35:1	place 8:8,11 60:2	381:4 383:21	415:2
74:10	89:13 122:9 130:6	420:7	pointed 193:2
persons 66:2	132:10 135:16	plan 415:4	227:6 278:2
345:2,9 353:7	149:18 151:22	planned 419:1	331:20 369:21
416:19	152:3,8 171:8	planning 36:2	pointing 131:7
perspective	181:12 204:18	37:8 52:8 150:16	points 124:20
259:10 266:10	337:21,22 348:14	200:9 283:21	policy 19:2,7,10
352:2,5	397:22 411:9	377:22 378:8	19:12 32:9 33:9
persuade 284:11	439:15	plans 115:20	33:11,13 35:13,18
284:15	placed 64:15	plausible 86:6	35:20 36:2 37:8
persuading 282:20	163:18 301:8	play 204:13	37:20 38:1 41:3,8
peter 95:11 100:6	418:15	please 8:5,7 9:12	41:16 42:7,10,15
100:8 218:17,22	placing 265:16	9:19 10:12,20	42:21 43:8,19
225:1,8 227:16	429:18 434:18	46:2 79:5 98:5	44:16,19 45:2,5,6
231:20 288:15	plaintiff 8:15	100:7 135:1	45:16,20,21,22
386:18 396:15	plaintiff's 383:20	213:16 214:17	46:4,5,6,7,14 47:6
399:7	plaintiffs 1:4,14	296:13 336:18	48:2 49:21 50:2
pgrossman 4:9	2:9,9,10,10,11,11	339:7 439:2,8,11	51:20 52:15 53:15
phone 74:3 118:16	2:12,12,13,13,14	plenty 130:15	53:21 54:6 57:2
121:19,21 122:9	2:14,15,15,16,16	plus 263:9 266:21	84:7 86:11 102:16
156:6,11 169:3,4	2:17,18,18,19,19	413:21	124:10,12 128:7
169:13 170:6	2:20,20,21,21,22	point 10:11 12:13	131:19 143:11
175:15,16 178:3	2:22 3:3,3,4,5,6,7	60:20 64:11 69:13	150:5 173:7,13,16
179:8 184:17	3:8,9 4:10 5:1	75:15 105:7,12	200:8 201:8
210:3,17 217:19	10:3 56:2 62:3	135:7 137:1,8	257:16 267:6,17
270:8 271:6 398:1	80:17 82:17 87:8	139:20 142:15	283:21 377:22
phones 8:8	93:19 114:7	150:4 165:11	378:8 404:8
phrase 278:10	120:15 123:11	166:13 171:20	political 13:17
355:21 356:4,7,20	137:17 145:7	179:22 185:17	58:7 74:13 75:11
360:7 363:11	147:10 158:19	186:1,2,6 187:12	75:12,21 104:10
366:7	164:14 167:2	199:13 216:15	359:4
phrased 280:21,22	182:7 189:7	234:7 237:15	politicals 57:12
337:16 348:11	194:15 199:21	241:8,12 251:2,13	76:5
	212:14 215:19	268:2 273:4	

politics 104:11	possible 55:21	precedent 379:7	330:9 332:4
poorer 319:16	65:22 72:19 85:14	precise 230:5,7	347:12 360:14
320:16	89:17 93:12 95:13	precisely 130:18	391:7
popped 342:4	95:16 101:12	142:21	president 116:7
population 108:17	102:1 133:17,18	predecision	385:2 388:14
155:8 272:18	135:13 145:4	375:18	392:14,20 393:5
328:8 332:9	169:7 197:16	preliminary 153:9	393:13 404:8
349:10,13,18,22	201:6 203:22	153:14 154:2,20	president's 29:1
352:18 354:4	231:2,2 254:9	156:18	392:5,11 393:2
355:3,17 357:7	282:19 306:7,17	premise 258:19	presidential 15:18
361:19 364:8,21	306:18 318:16	303:10	16:4 17:16,17
368:7,13 430:3	324:8 376:17	premised 301:20	48:17
431:3,13	380:15 406:18	premises 258:18	press 77:5,7 198:3
populations	422:10	prep 26:19 288:13	257:17 386:11
124:17 138:22	possibly 60:20	preparation 56:17	389:20 390:1,15
139:10 140:11	61:9 64:3 72:14	62:13 345:13	390:20 402:9,13
141:13 331:21	73:19 136:21	prepare 20:10,18	presumably 65:16
349:12,13 359:13	144:5 233:15	29:21 183:12	163:16 220:18
359:14 360:20	260:5,10 397:12	232:21 243:18	222:5 365:18
porter 1:15 4:4	post 67:7,10,19	289:15 290:22	presuming 295:4
8:21	77:14 78:21 79:16	369:8,9	presumption
portfolio 281:22	81:8,20 146:14	prepared 11:5	177:14
portion 429:16	402:22	179:17 183:14	presupposes
posed 70:19	postal 20:7	232:5,19 288:10	304:10
position 33:7	postulating 362:4	324:16 342:16	pretextual 301:1
35:20 37:22 38:7	potential 125:20	368:16 423:14	pretty 31:4 128:17
44:7,13 74:9,13	265:18,21 360:16	preparing 18:20	343:9
84:4 116:8 131:19	363:20 367:18	29:12 216:9	prevent 84:7
142:18 173:13	395:22 406:21	219:12 288:18	previous 149:4
175:8,11 188:19	408:7	prepped 289:1	159:6 247:2,3,21
188:22 281:14	potentially 64:15	prepping 26:10	377:7
313:9,14,15	84:12 146:15	290:10	previously 96:2
317:11,15 336:1	368:22 397:17	presence 315:11	103:8 111:20
410:14	practice 13:2	315:17 322:3	245:2 305:8
positions 19:2	159:19 413:20	present 1:18 34:13	prieus 394:5,9,16
possibility 133:4,9	practiced 15:14	76:12 97:22 126:5	primarily 179:10
135:18 160:12	193:11,19	126:7 151:7 152:4	224:9 257:16,17
164:5 171:5	practices 108:22	presentation	325:15
176:22 180:7	109:4,13,21 110:7	322:20	primary 41:11
190:17,21 380:13	pre 213:22 311:5	presented 223:7	48:5 124:20 161:6
	320:2	264:5 316:20	171:1 181:11

[primary - put]

Page 45

208:19 242:18 263:14 338:21 421:20 prime 369:14,16 369:17 principal 242:15 242:16,17 345:5,8 345:10 principally 345:2 print 384:17,22 prior 23:17 41:8 64:12,14 84:11,14 84:22 86:15,17 108:5 130:20 168:11 242:2 253:18 298:8 333:5 346:20,21 347:8,18,20 384:5 385:16 397:18 407:13 priorities 160:6 priority 168:10 172:21 383:1 privacy 167:10 205:17 private 8:6 204:14 privilege 186:13 186:15,18 195:22 340:16 privileged 340:11 346:15 privy 421:13 probably 59:7 64:2,7 83:14 85:2 88:8 94:7 96:20 104:9 124:3 129:1 129:17 141:17 142:18 146:13 147:21 150:4 179:9 190:11 211:16 215:14	225:6 243:2 261:16 271:6 285:13 323:14 341:4 346:14 390:14 391:13,21 413:11 431:8 problem 196:7 207:12,18 333:3 355:5 413:22 414:5,10 process 23:22 28:11 30:20 31:13 84:1,19 88:22 97:1 106:10 150:3 152:5,11,20 153:1 154:16 176:5 181:5,22 211:3 239:4,5 296:3 345:20 348:13 350:20 372:13 374:5 379:5 processes 106:1 152:13 347:4,6 processing 34:19 proclamation 50:13 produced 78:11 80:16 81:2 137:5 247:10 248:20 309:14 311:9 320:11 321:8 product 62:17 429:6 production 302:3 professional 42:8 program 402:11 programs 103:14 203:21 204:2 progress 172:22 183:14,18,22 197:4 215:1	225:11 230:10 231:15 232:4 233:3 338:2 promise 239:19 promote 350:6 prompt 161:2 pronounce 87:20 pronounced 203:7 pronounces 379:11,14 properly 124:19 281:1 proposal 334:17 proposed 335:3 351:7 proposing 368:15 369:19 proposition 305:14 306:6 prosecuted 419:12 protected 62:21 414:13 protection 6:4 provide 30:4 77:11 95:11,14 103:16 132:14 139:15 162:22 167:16 174:9 177:20 274:13 331:14 349:6 354:5,6 356:14 370:10,21 403:22 424:22 425:11 426:17 427:10 429:9 provided 95:2 126:17 132:19 155:14 156:2,5,10 156:12 157:10 174:6 248:6 258:20 275:5,10	301:7,21 303:12 317:5 321:7 344:15 354:15 367:10 370:17 372:1,7 418:2 434:7 provides 103:13 312:21 313:16 350:3 providing 95:3 350:9 355:1 422:14 423:1 public 386:2,11 published 390:5 pueblo 381:7 pull 22:22 284:15 pulled 66:19 91:17 pulling 66:16 purpose 11:14 350:4 369:18,19 408:21 414:14 purposes 65:6,21 67:3 85:20 207:14 207:20 208:4,6 249:1 421:4 pursuant 1:14 348:17 pursue 151:2 152:6 154:10 264:15 265:15 279:12 pursued 415:15 pursuing 150:19 put 61:20 132:2,8 174:17 176:8,19 190:11 243:4 245:9 248:12 267:16,16 295:20 300:1 302:13 306:5,18 307:13 323:19 327:14
--	--	--	---

[put - question]

Page 46

333:3 337:15 338:10 347:21 348:12 367:22 411:19,20 419:2 435:21 puts 306:8 308:6 putting 91:18 164:5,8 180:7 337:1,12 348:3 372:8 puzzled 202:8,13 202:17	76:13 77:22 79:6 79:17,18,22 81:15 82:4,8 83:8,20 84:15,17 85:18 86:19 90:13 96:1 96:15 97:8,17 103:2,5,7,12,18 104:1 105:8,19 106:3,9,18 107:3,6 107:11,13,19 108:1,19 109:9,16 110:1,20 111:21 112:7 126:6 127:2 127:11,15 128:11 128:22 129:11,11 129:16,20 130:22 131:3,4,12,15,20 132:2,8,10 133:5,6 133:9,20 134:6,12 135:5,12,17,18 136:12 140:4,12 140:18,19,21 141:7,14,21,21,22 142:8 143:3 144:1 144:11,15 146:7 146:11 149:17 150:3,11 151:2,3,5 151:15,20,22 152:2,6 153:4,13 153:17 154:10,13 155:2,17 156:9,17 157:5,15,19 161:2 161:21 162:7 163:3,7 164:10 166:10 168:4 170:12,22 171:6,7 171:17,21 172:1,3 173:15 175:21 176:11,13,17 178:10 180:8,8,15 181:19 187:3,7	188:5,11 190:4,7 190:10,12,14 192:16 193:5,6 194:4 195:4,8,10 195:16 196:2 203:1 204:7 208:2 208:7,16 209:13 209:21 214:2,5 216:5,10,20 218:1 218:14 219:13 220:13 221:9 222:14 223:4,8 225:12,16,20 230:11,14,18 231:18 232:2,6,9 232:19 233:3 237:18 239:13,16 240:3 241:14 242:6,11 244:22 247:13 248:11,19 251:1,4,10,13,22 252:16,21 253:2,3 253:4,7,10,11,14 254:3,5,6,10,17 255:3,8 257:12,12 258:2,12,16,18,20 259:2,3,4,6,9,13 259:15,16 260:7 260:14,17 261:1,9 261:15,22 262:3,6 262:8 263:1,1,6,7 263:12 264:6,15 265:3,4,16 266:5 267:16 268:1,8 270:3,6,16 271:20 272:1,5,9 273:21 274:11,17,22 275:9 277:21 278:9,15 279:2,9 279:13 280:2,14 280:19 284:7	285:22 286:12 287:16 288:8,17 289:5,6,22 290:20 291:2,9,19 292:15 294:7,11,14,15,19 295:9 296:4,18 297:12,22 298:6 298:19 299:5,8,10 299:17,18 300:1,4 300:5,6 301:9,11 302:2,5,6,12,15,18 303:9,11,13,14,20 305:9,21 306:5 308:15 309:9 310:14,20 311:15 311:20 312:1 313:7 314:14 315:21 317:10 319:2,9,11 321:21 322:22 323:4,16 324:16,22 325:4 326:17,17 327:20 330:1,14,20 331:8 332:5,8,20 333:4,7 333:13,14,16 334:8 337:2,10,15 337:21 338:10,15 338:22 339:14 341:1,3 344:18 346:19,20 347:10 347:22 348:4,19 350:17 354:15 355:2,3 359:1,16 360:1,15 361:17 361:21 362:7 363:8 364:1,2 365:10,22 366:4 367:8,14,22 368:8 372:11 373:10,11 373:11,12,13,13 373:18,19,21,22
q			
qfr 32:1 qfrs 29:15,17,22 30:8,12 31:15 quality 78:6 310:21 312:1 315:3 319:16,18 320:16,18 350:16 quantify 354:21 361:4 362:2 quarter 361:18 362:6,10,22 363:16 quarters 78:4 question 10:4,11 10:21 20:16 21:12 21:15,16 24:3,6,9 24:15,18,21 30:3 31:17 43:3 45:14 47:14 51:4 53:8 53:12,18 54:9,12 54:17 55:6,13 59:13 61:6 63:5 63:16,18 64:1 65:12,14,17,20 67:5 68:6,13,17,22 69:10,11,13,14,17 70:10,15,19 71:4,5 71:17,19 73:17,20			

374:3 375:14 377:10 379:4,10 379:18,20 380:6 381:15,21 383:9 383:14 389:6,7 391:13 392:6,12 393:3,18 394:22 395:22 396:10 399:16 400:6,10 400:20,22 401:7 402:2,6 403:11,21 404:3,12 405:12 406:7 407:1,14 408:21 409:4 410:5 412:6,18,22 414:4,8 415:5,12 415:17 416:21 417:5 418:4,9,15 419:22 421:3,8,12 424:11,12,17 425:2 426:14,22 427:2,7 429:18 430:16 434:19,22 435:2 questioned 192:8 questioning 111:1 240:14 questionnaire 130:5 367:14 questions 3:5,7 10:9,19 18:19 22:6 23:3 26:12 26:15,21 28:3,5,9 28:10,14,20,22 29:5,9,19 30:16 64:13 66:9,20 68:9 70:4,8 84:19 89:1 127:12 129:8 130:16,18 131:8 132:15,16 134:2,8 134:9 141:22	146:4 149:11,12 149:14 154:3 220:15 226:10 241:6 242:2,6 244:8 250:16 258:21 288:7,18 289:11 292:11,13 303:18 319:5 326:9 329:17 335:17,22 336:4 349:21 353:9 356:3 362:15 369:6,17,19 370:2 370:4,9,18,19 371:8,16 372:4,5,8 372:15 373:7,9,17 374:14,17 375:10 376:13 377:1 378:10 379:5 381:11 382:1 413:18 416:14 417:13,14,17 419:9 423:20 435:16 439:11 quick 30:18 109:19 127:10 168:12 264:14 375:12 quickly 106:19 128:20 226:14,15 365:5 quite 47:13 52:21 53:1 72:14 73:19 106:19 163:16 224:8 345:6 360:4 371:14 quote 59:17 67:10 72:1 75:10 83:8 88:14 115:19 146:3 148:4 202:7 225:9 236:1	310:20 357:12,19 357:19 385:2 388:19 quoted 390:6 r r 4:1 5:16 8:1 25:10 440:1,1 race 349:20 362:15 races 259:1 racial 138:21 139:9 140:10 141:13 raise 24:5,8,17,21 144:14 170:17 raised 69:1,4 81:14 96:2 104:3 104:14 111:20 112:7 144:8,15 245:2 390:10 raising 131:1 ramp 20:22 21:3,4 ran 12:5 125:7 407:11 randomized 334:12,13,17 335:3 range 70:8 105:19 288:18 353:3 365:2 ranges 49:10 rarely 257:3 rate 330:11,21 351:1,3 355:7 358:14 361:3 365:9 366:17 367:4,15,19,20 416:20 418:3 430:2,17 431:14 rates 105:20 132:14,17 134:7	137:7 327:5,6 366:13 417:18 ratio 430:5 432:16 rationale 254:1 266:9,14 267:5,8 267:12,22 268:4 268:17,22 271:18 286:11,18 294:21 296:7 300:10,13 300:16,17,19,21 301:7,8,12,13,21 302:13,15,19,20 302:22 303:21 304:1,4,11,12,15 304:20 305:4,8,15 306:8,9,19,20 308:6,7,9,10 350:22 351:19,20 351:22 352:3 383:11 392:6,11 415:8 reach 73:13,15 165:1 reached 168:3,6 400:4 read 15:5,7,7,9 78:10 79:21 80:21 101:4 130:15 145:13 146:17 238:17 294:5,8 312:17,21 314:11 314:16 315:22 321:13 356:21 376:1 402:9 428:22 429:15 436:3 438:3 reading 121:8 206:13 220:1 235:2 388:22 402:19
---	---	---	--

[reads - records]

Page 48

reads 80:20 207:6 207:11 329:20 339:9 358:12 ready 216:10 281:4 real 300:21,22 301:12,15 302:20 302:22 303:20,22 304:20 306:10 308:7,9 really 30:3 41:17 77:9 103:20 184:19 211:3 229:7 276:1 278:2 322:15 364:13 378:6 reason 64:17 140:9 143:5 181:9 192:9 257:19 258:1,3,19 260:16 263:8 264:11 265:18,21 266:4,6 268:8,12 272:10 273:13,15 275:1,6 286:10 291:7 295:18 296:9 300:21,22 301:5,9 301:15 302:7 303:6,11 305:3 306:10 307:16,18 315:14 316:3 340:10 343:14,15 361:20 414:16 429:14 440:7 reasonable 67:17 289:7 reasonably 80:3 reasons 70:9 86:6 86:8 106:22 167:10 205:17 259:8 262:1,12	263:15 264:8 291:1 301:1 304:16 330:16 359:10 360:21 418:21 429:12 recall 22:17 24:4,7 24:11,16,19 25:1 32:14,20 35:10 38:8 51:8 53:13 55:11 58:18,22 59:4,12,15 64:2 65:12 71:15 73:21 76:12 77:10,20 78:2 85:7,9,12 86:21,22 87:4 88:10 92:6 94:20 96:6 100:2,10 101:20 102:3 104:7,13 110:12 114:19 122:16 124:5,11 125:18 131:13 133:12,16 135:15 136:13,21 137:14 142:16,21 145:4 146:15 155:4 156:3 157:20 162:9 170:19 172:10,13 172:18 173:17,21 174:1 178:7,18 179:11 188:8,10 189:19 191:5,11 195:13,15 202:15 207:4,6 209:16 214:14 215:11 217:11 225:14,17 233:13 237:3 242:8 244:15 246:22 257:22 260:1 269:7 292:14 324:14	340:6 341:18 367:9 369:5 370:15 371:19 372:3 375:4 376:7 383:10 397:9 408:5,9 recalling 33:19 67:1 receipt 439:7 receive 26:21 93:3 237:16,19 246:7 received 31:16 216:15 222:12 245:4,5 246:2,5 247:18 290:4 291:8 294:20 295:10,15 335:20 344:4 347:17 387:1 390:20 receiving 71:18 receptive 285:13 recipient 115:9 181:11 recognize 212:20 222:3 384:21 recollection 11:14 27:8 29:8 34:4 61:3 67:4 68:5 71:20 89:10 93:11 196:4 203:17 258:7 323:6,11 324:7,10,11 328:5 346:10 398:12 recommend 101:3 132:13 142:19 344:22 recommendation 246:13 248:22 352:6,7 recommendations 86:15,17	recommended 173:9 245:13 247:16 248:5 283:8 285:11 344:11,14 350:15 421:1,10 recommending 113:18 132:21 recommends 101:2 413:17 record 8:4,12 10:1 11:10 20:16 25:9 26:12,15,22 28:3,6 28:14,21 29:6,9,19 36:21 39:14 50:19 50:21 60:13 98:4 111:8,9,12 141:8 158:8,9,11,14 164:20 211:18 212:2,3,6 239:9,10 240:17,18,20,21 250:9,10,13,15 301:8 308:20,21 309:2,6 311:8 321:8,9 335:12,13 335:14 343:3,8 346:15 347:8 354:3 380:16,19 380:20 381:1 383:20 391:19 419:13,15,15,16 419:17 435:7,9,11 435:12,13 436:6 437:11 439:10,17 recorded 8:14 recording 8:10 records 37:5 60:10 350:19 353:7,13 354:2,5 355:13 367:22 368:2,9,14 368:16,18 369:2
--	---	---	---

[records - remote]

Page 49

418:18,20 421:1 421:11 423:11 424:8,13,21 425:3 429:22 430:20 431:4 red 53:4 redacted 145:20 145:22 167:9 227:8,11,16 229:20 232:7 340:18 redaction 78:12 78:14 redactions 222:8 redactors 340:2 redistricting 14:22 193:19,20,22 194:10 393:22 395:4 396:4 399:20 401:11 404:13 406:8 409:10 reduced 437:9 reduction 154:5 refer 79:3 143:11 146:16 148:11 200:18 281:11 292:18 384:8 414:6 reference 137:6 141:17 142:21 187:9,10,18 209:4 229:12 230:12 231:10,17 239:21 302:12,14 357:8 358:2 referenced 301:22 409:14 referencing 219:15	referred 60:3 118:7 141:12 143:6,14 198:9 270:20 352:21 382:10,16,18 409:21 410:9,12 411:11,11,13 referring 72:6 96:8,18 102:22 107:15 132:6,8 137:10 149:3,4 150:22 155:3 161:14 187:14 200:21 213:8,21 216:19 217:16 222:21,22 229:8 239:5 241:16,18 241:19 244:16,19 354:11,12 357:10 357:15 358:3 360:7,9 373:22 388:20 400:5 refers 58:3 60:22 97:6 113:10 157:13 163:2,7,8 230:13 277:2 321:2 388:12 reflect 147:22 165:14 312:17 317:11 377:6 reflected 55:19 61:7 72:18,20 89:15 110:16 312:9 313:15 321:12 433:7 reflective 317:9 reflects 217:21 220:9,10 312:19 327:11,15 377:9 reform 3:2 291:22 293:2,7	refresh 288:3 refreshing 11:14 refuse 332:8 refute 351:6 regard 26:7 48:3 51:10 270:2 regarding 21:11 22:2 59:13 95:20 117:13 119:11 127:12 165:1 195:3,8 220:16 221:11 225:11,15 225:20 230:10 233:3 241:15 242:10 244:20 262:6 383:13 394:10,11,13 396:9 400:10 404:2 405:11 409:3 439:5 regardless 320:14 region 3:18 register 283:2 registration 13:5 regular 38:9 44:14 44:16 159:19 414:1 reidy 7:1 9:1 reince 394:5 reinstate 95:22 244:22 348:19 reinstating 96:14 97:7 103:1,5 107:13 rejected 352:1,4 relate 31:17 140:16 related 9:6 15:9 20:9,17 110:7 119:4 224:9 437:12	relates 318:9 relating 130:4,16 relation 14:4,5,6 relative 112:17 313:3 437:15 relay 383:4 relayed 184:19 185:3 233:19 237:11 383:4 relevant 39:4 50:6 82:11 108:20 109:6 211:3 253:9 253:14 254:2 260:9 299:9,17 300:8 304:17 340:19 346:22 427:12 428:11 reliable 351:5 relied 108:2 351:2 rely 108:7,13 350:18 relying 283:7 remaining 355:5 355:10 431:9 remember 27:1 28:17 32:16,21 33:2 37:4 60:5 61:1 71:18 79:5 82:2,6 92:4 114:4 147:6 179:15 188:12,14 202:12 210:13 221:12,14 237:22 255:12 287:20 292:13 322:17 remind 117:19 356:22 386:9 reminded 57:18 reminder 28:18 remote 20:1
--	--	---	---

[repeat - responsibilities]

Page 50

repeat 259:5 398:21 403:10 repeatedly 223:14 repetitive 422:19 rephrase 10:13 278:18 422:19 replied 165:22 reply 71:12 130:1 report 9:10 36:4 42:3 43:5 102:11 178:14 197:3,8 252:8 272:15 378:2 reported 36:13 37:10,15 266:1 411:20 417:11 reporter 9:3,12 13:12 26:13 186:9 191:14 201:14 211:14 243:12 293:17 353:15,20 437:2 reporting 1:17 202:6 439:14 reports 120:8 310:18 402:17,19 represent 10:2 66:18 79:11 80:15 205:14 241:3 290:13 311:7 317:15 320:7,11 336:11 364:6 375:20 420:7 432:15 representation 312:8 374:5 representations 432:10 representative 292:12 298:18 299:7 300:3	316:19 representatives 297:10,16 299:18 434:21 represented 205:15 represents 314:20 342:10 republican 307:4 request 146:6,11 151:4,19 153:3,7 153:22 156:16 159:13 162:15 164:3 165:15 166:8,9 173:1 176:3 177:2,7,18 177:18 181:8 184:5 185:8 186:2 190:9 192:5 197:6 223:3,5 239:10,15 251:3 262:17 264:5 265:16 271:22 279:1 290:16 291:8,10 294:20 295:10,15 295:19 296:3,6,10 296:13,22 297:3,4 297:8,11,19 298:7 299:4,11 300:7 305:11 309:8,11 348:17 349:4 381:14 382:15 389:14 410:2,22 412:5,13 413:2,6 414:22 415:2,19 421:2 426:13 427:6 429:10 requested 64:14 153:17 239:3 261:13 299:19 342:13 348:18	requester 180:14 180:20 requesting 175:20 204:19 237:17 349:2 412:21 419:22 requests 28:13 64:21 154:4 250:22 337:14 421:11 require 20:22 21:3 21:4 368:20 required 13:22 300:15 419:7 research 4:2 108:21 109:13 155:5,6,11,12 172:7 181:6 193:2 282:21 283:3 285:6 413:15 416:8 researched 109:4 192:21 326:16,18 researching 285:16,18 reside 207:12,19 residents 80:22 81:18 resolve 436:2 resolved 139:20 141:2,5 142:10 341:3 resources 412:2 419:2 respect 86:3 248:13 291:18 309:11 324:20 326:15 382:14 418:4 430:10,19 respectful 281:1	respective 1:19 respond 129:11 332:22 353:9 360:14 367:13 390:7 418:9,10 427:11 430:19 responded 151:21 217:18 218:17 332:22 367:8 372:1 respondents 207:8 369:3 responding 76:14 331:22 response 30:6,18 65:14 67:18 83:8 105:20 132:14,17 134:7 137:7 146:6 151:4,18 159:13 166:7 177:7 180:12 184:1,4 215:6 216:4 276:15 327:5,6 330:11,12,21 351:1,3 358:14 362:7 363:1,16 365:9 366:13,17 367:3 372:7 373:6 373:9 377:10 387:7 389:20,22 391:8,8 409:15 416:20 429:10 430:1,17 responses 29:12 29:21 30:8,12 32:1 353:6 355:12 371:16,20 425:21 429:21 430:6 431:5 435:18 responsibilities 16:8 17:11
--	--	---	--

[responsibility - roles]

Page 51

responsibility 242:20 289:13	371:7,14,18,19 372:12	203:6 205:4 209:22 214:11	329:1,7,8,13 330:3 333:10,17,22
responsible 26:10 44:20 192:12 439:5	reviewing 370:3 revision 52:9 177:15	215:8 216:6,17,21 218:21 220:13 221:4 223:11,15 229:19 230:19 232:22 234:5 238:7,8 240:2 241:8,20 243:8,19 244:16 245:22 246:4 250:21 251:20 253:16 254:22 255:12,18 256:11 259:18,20 260:4 264:21 265:2,5 268:13 269:19,21 270:3,9 270:10,21 271:1,5 272:1 274:4,14 275:13 277:4,5,7 278:10 281:1 282:8,11,12,15,17 283:11,13 286:1 286:14 287:5,8 288:1 289:2,6 290:2 291:19 292:7 293:14 294:1,5,9,12 295:7 295:16,21 296:13 296:18 300:14 305:17 307:8,19 309:11,13 310:15 311:3,21 312:18 314:6,11 315:7 316:8,15,16 318:10,22 319:21 320:10,21 321:11 322:9 323:4 325:21 326:19 327:1,4,6,7,14,17 327:19 328:16,17	334:4 339:15,17 341:12 342:6 345:8 356:3 375:9 376:3 382:22 410:16 411:9 412:2 415:11 416:16 419:9 421:22 422:20 424:5
responsive 65:17 68:14,17 79:22 168:13 300:4 331:9	riggins 17:10 right 18:22 19:17 19:18 20:14 26:4 26:10 27:6,7,12,18 27:22 28:17 34:22 37:4,9 46:15 55:2 56:21 57:2,5,6 58:16 62:9 63:9 63:17 66:15 67:7 67:20 68:11 72:11 73:9,14,18 74:16 83:2,5,9 86:12,20 88:1 89:19 90:20 91:1,22 93:2,5,6 94:17,18 97:9,10 97:20,21 98:3 106:21 107:14,17 119:5 121:15,16 122:5 124:21 125:3 130:10 131:2,16 132:4 133:18 134:8 136:18 138:9 140:5 141:3 143:2 143:15 144:11,16 147:3 148:6,9,17 150:5 152:22 153:4,5 157:5 159:14 163:3 165:12,18 166:14 168:4,7 174:21 176:13 177:8 178:15,17 180:21 183:6 185:8 186:3 187:20 193:8 197:7 199:12	rights 5:11 14:19 126:16 127:3 153:18 155:9 192:13,17,18,21 192:22 193:8,10 193:11,14,17 194:8 262:9,16,18 263:14 264:9 265:1,5,11,12 268:3,9 271:1,14 277:11 295:1 349:9 381:22 382:6 383:6,6 400:4 403:7,16 409:19 410:1 427:18	
responsiveness 330:2 366:2			
rest 19:19 130:15 312:21			
restate 187:2 228:10			
result 319:15 320:16 338:6 350:5 362:16 393:17 394:21 395:21 399:15 401:6 404:12 406:6			
resulting 361:17 366:1			
results 252:8			
resumes 43:4			
reveal 291:1,7 305:9			
revealing 307:17			
review 11:8,13 41:1,13 97:18 105:9 151:6 153:10,14 154:2 227:7 281:8 290:8 296:4 325:2,16 360:19 375:12 378:9 426:12 427:6,10			
reviewed 94:7 244:2 247:8 249:4 344:12 345:7			
			road 4:3 rockas 198:1,2 256:10 386:4,8,13 386:14 387:1 391:6,18 role 17:13,20 19:2 25:19 26:1 48:3 51:10,17,20 52:14 53:15 74:20 139:13 152:11 393:2,6 roles 37:13 204:13

[rolled - secret]

Page 52

rolled 23:6	rule 46:6 70:2,3	279:20,21 293:11	321:2,6 330:5,8
rolling 371:20	run 30:5 98:18	312:11 314:15	340:17 352:12
room 6:16 90:8,10	150:9 224:10	317:10,13,16	386:10 388:20
90:11 197:15	411:7	321:11 340:3	429:5,18
rosenberg 2:4	s	342:12 356:5	scalise 53:5
5:10 336:5,7,16,19	s 4:1 8:1 25:10	358:1,21 361:7	scenario 155:7
340:15,21 341:14	57:18 141:8	431:22	schedule 20:22
345:22 354:8	160:18 440:1	says 40:8,9 57:17	39:3 86:7 88:15
367:5 372:17,20	sacramento 5:19	58:10 59:17 66:17	89:4,13 92:2,16
373:1 374:22	safe 364:16	67:10 71:21 78:15	93:1 202:4
376:15 378:20	sahra 377:20,21	78:17 80:21 81:6	scheduled 38:13
380:12,16	379:4,11,14,15	88:14 95:17 96:9	39:1 91:14
ross 17:8,9 18:14	380:5	96:13,19 103:1	scheduling 85:21
20:11,18 21:11	sample 334:4	104:16 107:12,16	school 4:14 11:18
35:8 40:17 63:7	352:18 357:7	108:12 111:19	11:19 12:17
65:1 85:5 115:19	416:16	115:19 121:17,18	schumer 23:8
121:20 144:2	sampling 329:14	127:10 130:2,8	science 12:1 13:17
200:19 213:17	356:11 368:11	132:13 138:15	14:2,6 18:11
241:10 244:13	san 4:21 336:11	139:17 146:2	104:10 434:3
250:22 251:20	santa 11:20	148:8 150:8 152:7	scientific 433:15
279:11 284:13,13	saturday 189:16	153:2 154:22	scientifically
285:21 286:3	saw 62:19 63:1	157:16 159:12	357:9
287:18 289:10	83:13 88:8 94:5	160:16 161:9	scientist 309:22
310:1 318:3 319:7	94:15,19 97:19	162:11 177:13	scientists 357:13
324:5 338:9 339:3	98:9 113:9 125:6	181:13 183:1	scrap 259:18
343:1,6 344:9	138:5 145:17,19	184:6,10 185:17	se 289:16
381:5 390:10,22	147:19 165:5	187:11 191:12	search 71:10
401:18,19 412:3	201:13,18 221:1	200:13 204:8	109:20
413:4 415:14	222:5 225:4 227:4	206:8 213:14	seated 256:18
418:15,19 420:1,9	238:4 310:9	214:16 216:8	second 25:2 57:16
423:14	319:21 320:1,3	221:2 222:12	80:8 95:17 107:10
ross's 63:12 94:12	330:3 342:16	225:13 229:8	116:18 121:7
286:11 326:5	344:19 364:1	231:14 235:22	130:7 151:14
337:5 420:14	390:22	236:17,21 244:19	178:21 182:22
rough 328:4	saying 45:11	251:20 257:11	191:18 200:11
roughly 135:16	149:16 166:3	258:1 273:19	205:7,10 240:7
271:11 328:3	183:21 203:5	274:1 275:13	284:6 326:12
357:11	214:4 215:4	279:6,8,10 293:21	335:10 358:8
rpr 1:17 437:3,20	217:18 218:17	294:14 295:9	384:9
439:14	227:15 230:9	299:7 310:16	secret 125:2
	252:13 267:21	311:17 319:15	

[secretary - see]

Page 53

secretary 17:8,9,9 17:20 18:1,14,20 19:16 20:11,12,18 21:11,20 22:1,4,5 22:6,13,14,17 24:8 24:13,20 26:8,9 27:14 30:1 31:16 31:21 32:12 33:3 35:8,21 36:5,6,8 36:14,17 37:1,2,11 38:2,10,19 39:11 40:4,11,17 41:11 41:17 44:17,21 45:8 46:7 47:20 48:13 49:18 50:10 51:13 52:12 54:2 54:5,12,22 55:1,5 57:5,14 58:7,12 63:7,12,13 65:1,2 65:14 67:2,9,15 68:3,10,21 69:1,4 69:16 71:1 72:1,9 73:5,8,17 75:8 76:10,13 79:16 81:9,13 82:3,7 83:8 85:5,5,18 92:13 93:9 94:12 95:18 96:8,13,18 98:17 100:16,19 100:20 101:1,18 104:3,14,16 112:3 112:8 113:2,15 115:21 116:11,20 117:2,9,12,16 118:8 119:3,7,13 119:15 120:3,5 121:20 122:18 123:2 124:15 125:17,22 126:6 128:8 129:7,12 134:11,14 135:3	135:11 136:1,11 137:5,11 138:14 139:17 140:15 141:11 142:5,9 143:5 144:2 146:1 146:10 147:4 148:1,14 149:16 150:8,22 151:17 152:21 154:9,13 159:11 160:4,16 161:20 162:1,10 162:16,20 164:2,4 166:6 168:10 171:4,16,20,22 172:19 173:18 174:18 176:11 177:5,13 179:18 181:7 183:9,13 184:7 190:2,5,13 191:1 196:18 197:1 198:3 199:7 200:19 201:4,8 202:7,13,17,21 204:19 205:7,9,16 205:18 206:2,2,17 207:17,22 209:1 209:10 210:3,10 210:15 213:3,4,14 213:20 214:21 215:12 216:8 217:14,18 218:13 219:5,13 221:15 222:4,12 223:11 224:3 225:10,15 226:3,13 230:9 231:15 232:4,13 232:18 233:4,9,17 234:15 236:13 237:1,5 238:21 239:1,14 241:9,9 241:10,12 242:9	243:2,22 244:13 245:13 246:13 247:7,11,16 248:7 248:15 249:1,5,9 249:14 250:22 251:20 252:15 253:6,7 254:7,20 255:1,7 257:11 258:1,11,20 260:6 261:1,18 264:6 266:1,2,6 267:8 268:2,7 272:8 279:11 284:13 285:21 286:3,11 287:16,18 289:10 289:19 290:12,14 290:21 291:1,6 298:10,14 299:9 299:17,19 300:5 302:18 303:21 304:18 305:8 309:19 310:1 318:3 319:7 324:5 325:5,6,8 326:5 333:18,20 337:5 338:9 339:3 343:1 343:6,20 344:9 346:18 347:21 351:11,12 357:14 358:5 360:4,6 364:1 369:11 386:11 390:10,14 390:22 391:7,11 397:4 401:18,19 409:16 410:21 412:3,14 413:4,10 415:14 418:15,19 420:1,14 423:6,14 425:8 428:3 432:15 433:21	secretary's 27:1 63:18 71:5,10 72:21 76:16 90:7 90:11 92:1 102:22 107:12 111:15 115:6,10 138:16 146:17 159:17 161:1 177:18 199:9,10,11 214:15 216:5 217:22 233:16 239:18 255:15 260:16 265:15 266:15 267:22 286:18 301:4,12 310:6 351:21 352:3 355:21 387:15 389:11,13 391:10 412:16 432:2 section 50:14 349:5 394:2 395:6 396:6 399:22 400:1,5 401:13 404:13 406:8 408:14 409:19 410:1 411:15 sector 204:14 security 179:6,14 180:1,10,13,19 181:14,15 183:3 275:16,22 276:10 277:2,10 279:22 286:14,21 378:1 382:17,19 see 10:13 38:16 56:14 57:7,17,22 58:1,13 63:4 72:4 78:21 80:13 81:3 81:4 88:18 89:2 96:4,16 111:21
---	---	--	--

[see - she'd]

Page 54

115:2,18 116:2 121:11 122:2,3 127:8 130:7 131:8 131:12 132:16 139:22 140:1 146:1,8,9 148:13 149:15,20 157:1 160:21 161:11,12 162:10,14 163:13 180:22 182:22 184:21,22 191:8 200:16 202:5,10 203:4 204:5 205:22 206:8 207:9,10,15,16 208:20 213:6,13 213:18,19 215:15 216:13 218:16 222:17 227:18 231:9 234:11 235:6 236:4,5,8,9 238:9 258:14 259:7 261:16 267:2 270:5 293:21 310:7 318:1 320:1,6 321:5,6 325:14 339:8 342:19 352:22,22 358:16 358:17 364:21 379:9,17,19,21 384:11 385:8,9 386:20 seeing 66:7 88:10 99:17 114:19 137:14 175:19 231:19 232:7 244:5 seek 412:17 seeking 421:5,6	seen 38:6 43:4 44:7 56:12 62:9 83:11 88:6 94:3 114:15,17,21 121:2,4 138:2 145:15 147:16,17 159:4,7 165:3 189:14 200:5 212:22 216:1 220:5 223:14 224:22 227:1 235:4 238:3 310:2 310:3 318:7,8 320:7 373:3 375:2 375:4,5 376:16,20 378:22 385:12,13 385:14 387:9,11 self 353:6 senate 12:1,18 16:11,13,20 17:6 18:6 senator 11:22 18:9 20:6 23:16,17 25:17 senators 23:15,21 send 28:8,9 30:6 30:16 44:9 49:5 50:7 60:17 68:16 83:15 92:9 110:19 189:17 191:9 272:4 349:2 370:5 413:2 sending 79:16 sends 160:15 senior 38:20 44:13 47:15 52:12 53:3 74:5,7,17 75:10,12 75:21 76:7 96:1 98:17 111:19 112:1,6 113:11,20 113:20 124:22	173:12 245:1 sense 19:4,5 59:18 108:2 110:4 385:6 385:6 389:6 sensitive 8:6 131:4 sent 60:15 61:21 62:10 65:13 71:13 73:7,12 81:8 83:4 83:12 114:4,20 121:20 148:1,14 165:21 189:15 203:5,8 208:9 212:21 215:6 220:7 225:6 232:12,16 233:2,4 237:21 247:4 248:21 311:6 322:21 339:3 370:6 385:21 387:6 sentence 95:17 183:1 310:12 313:13 319:15 329:20 339:9,10 348:16 352:12,21 356:21 357:1 358:12 385:1 sentences 430:10 433:16 senteno 2:4 5:1 381:2,4 382:2 384:1,20 390:8,16 392:13,22 403:12 403:13 404:17 407:21 409:5 410:4,19 412:8,19 413:14 415:7,13 416:2 419:13 428:12 sentiment 389:9 389:10	sentiments 389:3 separate 22:8,9 106:8,11,15,20 107:9 266:5 separately 22:14 22:15 26:20 september 182:21 183:10,19 187:15 189:16,18,18 215:12 222:11 225:6,19 227:15 234:11 235:8,15 237:14 339:3 437:22 sequence 166:17 series 223:6 288:22 322:10 servers 352:18 serves 179:2 371:22 service 20:7 307:3 sessions 167:22 279:11 283:10 400:9 set 85:12 161:10 166:10 199:3 349:11 354:3 372:8 setting 17:21 25:6 25:21 189:20 220:11 231:14 settled 146:4 148:19 149:11,14 seven 12:6 234:14 sex 141:9 sexual 64:18 84:18 86:18 130:16,22 131:14 shah 5:5 she'd 174:3
--	---	---	--

[she'll - speak]

Page 55

she'll 10:18	269:5 278:11	257:10 417:9	sooner 200:13
sheet 438:7 439:8	297:1 316:6	situation 347:12	sorry 20:15 40:2
shelf 132:19	side 74:12 150:5	355:10	45:13 100:7
sherpa 16:10,12	203:18 363:14	six 12:4 41:4,5	110:22 115:14
16:14 17:5,13,20	sign 101:3 113:18	42:9 43:19 188:3	121:8 134:18
21:20 25:6,21	245:13 246:14	size 20:20 272:17	156:9 158:18
26:2,5 31:13 77:1	247:8,17 248:8,15	331:2 380:1,4	186:11,19 190:18
124:7	249:5,9,15 344:11	slightly 297:22	197:19 207:2
shocking 73:15	436:3	slow 353:20	228:9 238:11
224:2	signature 94:12	small 76:4 224:11	241:17 242:5
short 55:17 211:15	326:7 437:18	354:18,20 356:17	255:22 266:1
240:12 250:3	439:4,6,9,13	371:12 384:17,22	271:20 299:18
327:4,5,13,15	440:19	414:10 430:6	316:11 318:18
336:20 363:19	signed 100:16,19	smaller 355:18	358:11 379:13
418:10	100:22 247:11	356:14	393:1 398:20
shortly 25:22 27:9	438:7 439:8	smart 433:21	400:9 403:10
27:22 29:1 54:19	significant 68:8	snapper 53:4	405:21 408:12
55:7 69:2 81:15	261:14 350:10	snow 361:14	410:6 415:9 420:3
142:16 177:4,4	360:2,11	sogi 140:18,20,22	sort 31:9 36:15
214:4 234:15	significantly	141:7,8,13	47:20 84:21
281:18 337:9	357:16	solely 370:17	218:19
341:17 387:1	signing 369:6	solutions 3:18 9:2	sound 11:2 27:6
show 92:15 317:18	similar 179:3	9:4	27:17 238:7 292:7
326:4 333:1 353:7	226:9 375:6 379:7	solved 196:7	sounds 11:3 27:7
376:11,18	433:22	somebody 42:17	27:22 174:21
showed 97:21	simple 303:20	44:9 46:17 51:15	236:2 238:8 241:7
101:4,14 332:19	simply 55:12	60:15,17 61:20	356:18
353:5	92:14 131:7	73:2 76:1 80:1	source 360:16
showing 81:17	152:16 185:10	90:16 110:14	431:19 433:14
293:5 372:18	276:8 278:3 285:8	118:1 132:10	sources 311:1
373:2	323:16 342:12	149:10 179:6	312:4 315:6
shown 56:16 62:13	382:19	185:16 270:13	southern 1:2 8:19
62:21 98:10,15,20	single 314:13	279:10 283:5,9	space 18:11 257:1
99:2 101:7,10	317:14	285:5 289:18	speak 117:2,9
145:20 244:10	sir 253:4 259:5,15	324:19 362:8	125:5 136:6 145:2
359:22 366:17,19	275:1 303:13	370:21 387:5	168:20,22 169:4
377:7 384:5	305:7 315:11	411:7	171:10 172:19
shows 223:18	323:17 419:20	somewhat 44:3	177:21 179:21
391:19	sit 287:11	285:12	190:18 191:1
sic 27:19 84:17	sitting 77:15 98:3	soon 59:20 61:1	208:14 277:4
157:11 219:14	197:21 256:15	95:18 96:9 104:17	381:16 400:12,14

[speak - starting]

Page 56

400:19 407:22 speaking 134:18 139:16 142:22 182:10,17,18 183:5 184:14 207:2 specific 18:13 46:14 61:3 102:3 153:11 361:19 394:12 402:20 403:1 specifically 59:4 66:17 221:13,16 288:16 322:20 382:3 405:2,4,6,9 specificity 330:19 specifics 225:17 specifies 136:16 specify 122:8 187:21 speculate 68:6 120:2 168:15 251:16 268:16 287:1 416:1 speculated 331:16 speculating 82:9 251:14 speculation 69:19 83:18 98:12 116:14 117:6 118:18 122:7 130:13 132:5 133:2,22 140:7 141:16 142:12 143:8,17 144:21 146:19 148:22 159:21 161:5,16 163:5 201:1 202:20 226:6 268:15 286:7,16 347:19 360:17	380:8 390:12 392:9,18 422:6 428:9 speed 40:19 59:10 204:15 spell 25:9 305:16 spelled 303:6 spelling 259:7 304:9 spells 304:14 355:1 spence 5:11 spend 150:15 204:16 218:19 285:16,18 spent 20:7 112:16 112:20 142:1 143:1 spoke 135:4 136:1 136:4 169:2,13 170:5 174:22 175:16 178:2,16 179:20 180:4 195:10 206:18 207:5 210:11 215:15 227:16 233:10,17 271:6 383:3,8 397:4 408:3,6 410:17 spoken 118:3,4 121:21 122:14 123:5,7 125:9 135:11 136:11 156:1 166:20 175:5 183:16 197:18 216:22 217:3 233:5,21 234:1 387:14 399:7 400:21 401:1,20 406:9 407:2,12,19	409:18 sponsor 270:6 271:19,22 sponsored 171:7 spots 147:15 spring 55:11 75:5 96:12 103:4 105:7 108:22 109:18 110:8 119:1,5,8,12 126:21 134:12 135:19 140:16 141:6 146:12 184:8 196:17 209:18 250:22 251:21 262:15,19 263:5,10 264:3,12 264:17 265:7 285:22 square 278:8 squares 295:6 staff 17:1 23:13,14 23:17,18,21 25:16 33:8,10 34:17 35:13,15 36:7,9,13 37:11 38:20 39:12 39:13,15,17,20,22 41:10 42:9 45:11 46:5 47:14,15 48:13 49:18 50:10 52:12,16,19 53:2,3 53:5,8,12 73:13 96:14,19,21,22 97:1,3,7 102:9,18 103:1 107:12,16 125:20 156:21 157:8 160:7 198:8 198:12 201:7 268:5 279:16 283:18,19 284:10 284:20 289:17 301:7 321:17	345:5 377:18 378:7 395:9,14 412:1 433:1,3 staff's 199:17 staffed 41:9 stakeholders 53:22 54:1,8,14,15 358:13 stamp 73:10 82:15 164:20 318:3 376:5 385:20 stamped 56:5 78:5 87:11 93:18 114:10 120:19 123:14 137:20 145:10 158:22 167:5 182:12 189:10 194:14 200:12 234:19 stand 57:13 192:9 standards 44:11 standing 30:19 38:9,11 47:17 256:19,19,20,21 300:18 standpoint 350:15 stands 141:8 235:12 381:7 start 12:8 19:22 34:6 61:15 171:9 181:13 230:22 239:4 275:19 429:2,7 started 11:21 43:11 73:5 75:14 195:14 287:14 411:12 starting 269:5 339:9 429:14 430:11
---	---	---	---

[starts - support]

Page 57

starts 296:3	stay 402:21	198:20 232:11	sugar 52:9 201:12
state 5:15 6:1 9:19	steel 50:13 53:1	331:5	201:17
70:7 118:1 206:2	201:19 288:20	struck 103:22	suggest 231:14
420:6,8,8 434:21	steer 283:10	studied 15:12,13	suggested 123:2
stated 308:6,9	stenographic 9:10	study 13:16	136:20 248:2
312:20 342:6	stenotype 437:8	334:13	275:15,21 276:8
346:17 389:15	stephen 404:2,5,6	stuff 47:3 203:16	283:12 298:20
410:21	steve 116:6 405:11	su 377:20,21 380:5	346:6
statement 80:1	405:19	subcommittee	suggesting 247:7
130:15 260:13	steven 115:21	148:2,15	344:16 363:15
295:13,14 305:12	116:4 119:16	subject 16:22 18:1	suggestion 278:3
306:15 312:6	121:22 122:18	22:3 57:11 63:4	suggestions
313:1,18 314:9,11	123:1,5,7	63:15 71:4 148:8	289:17
314:13,16,20	stevens 11:22 18:9	164:22 177:15	suggests 139:7
315:13,20,22	20:6 25:17	186:13 195:21	418:1,2
316:15,21,22	stick 162:11	220:17 230:13	suit 287:4
317:2,8,14,17	sticking 141:7	288:11 291:4	suite 3:18 4:16,20
348:9 377:10	stipulate 205:19	338:13 345:20	5:3,7,12
417:6 432:1,2,9,14	313:6,10	360:10 407:3	sum 319:15
434:6	stood 314:5,8,15	subjects 202:8	summarized 339:2
statements 313:5	stool 256:20,20,21	231:21	summary 312:5
states 1:1,6 8:17	stop 150:20 211:9	submit 28:20	313:18
8:18 13:9 70:9	stopped 199:13	249:2	summer 141:6
207:13,19 364:22	417:19	submitted 28:15	199:2 209:17,18
385:2 438:18	straight 260:2	subsequent 237:15	supersecret
440:3	331:15	413:15	286:12
stating 80:3	straightforward	substance 120:10	supplement
statistical 105:17	290:7	233:7,18 237:10	244:10 342:22
105:18 106:1	strategic 36:2 37:8	275:14 298:4	343:2
108:21 109:4	52:8 200:9 283:21	385:15 426:11	supplemental
329:16 351:8	377:22	427:5	101:2 247:17
417:15 434:9,14	street 3:18 4:8,12	substantially	248:2,15 249:2
statistics 13:19,21	4:20 5:2,7,18 6:4	310:22 312:2	341:6,8 343:18
14:3 42:18 47:1	67:7 80:1 81:21	313:4 315:4	345:16 346:5
219:6	146:14 402:22	sudden 342:4	supplemented
status 78:20 82:1	409:13	suddenly 292:16	350:19
223:3 310:22	strike 44:14 71:15	294:16	supplements
312:3 315:5	76:20 96:6 105:15	sufficient 105:12	343:5,7
319:12 425:22	115:14 116:18	264:11 265:14,18	support 86:12
statute 15:9	137:15 160:14	265:21 304:11	153:12 155:19,21
412:14	167:18 183:8	331:3	193:5 267:9

[support - tell]

Page 58

350:22 432:8,12 432:14 supported 370:1 supporting 240:1 supports 417:6,8 432:1 supposed 266:17 284:3 302:7,21 304:2,3 supposition 67:17 sure 10:16,20,22 35:11 38:5 42:5 43:12 48:5 49:22 50:7,12 52:1 59:9 78:17 79:7 86:13 90:14 91:22 98:21 104:11 105:3 110:5 128:1 136:8 149:1 154:15 187:5 194:3 198:7 211:19,21 213:9 217:15 219:16 240:9,16 243:10 248:10,18 249:6 251:17 255:17 260:4 279:19 289:1 293:13 296:9 300:2 305:22 308:2 311:5,16 312:10 329:14 334:16 338:16 356:1 357:2 360:3 368:19 373:14 387:16 389:19 390:19 401:19 417:5 420:5 424:18 surmise 160:9 surname 167:9	surprise 344:20 389:17 432:13 surprised 342:19 344:19 386:19 387:10,11,13 432:18 survey 14:9 78:18 81:22 356:16 surveys 105:16 327:1 357:7 swear 9:12 sweet 336:20 switch 43:13 switched 231:21 232:9 switching 434:17 sworn 9:16 437:7 swr 200:14,18 t t 25:10 440:1,1 take 8:11 12:13 14:16 17:7 22:10 22:13 26:20 28:15 30:1 34:3 44:13 54:2,4 56:10 57:11 58:2 60:2 62:8 63:13 66:22 80:5,8 84:11 89:13 92:19 111:5 127:6 130:1,6 139:11 151:9 168:12 172:14 211:15 229:13 239:8 244:9 250:3 261:15 275:17 283:11 287:21 292:10 298:8 302:16 315:8,13 315:14,15,17,22 316:3,4 321:22 322:5 339:6 341:5	365:14 406:16 431:9,11 taken 8:14 106:13 304:13 313:13 437:5,8,14 talk 52:6 101:17 115:21 116:12,20 117:1 122:18 123:3 135:6 160:17 168:3 170:9 173:6,15,19 173:22 175:4 185:21 190:2 231:4 249:13 275:21 276:9 283:6 284:9 338:17 359:17 382:5 383:5 410:16 411:15 419:20 talked 35:11 97:14 100:4 126:14 131:11 155:13,15 157:18 175:7 207:7 219:11 277:14 283:12 338:13,18 381:8 383:2 talking 20:12 46:4 46:5 96:11 97:10 111:14 122:5 132:1 133:19 140:15 179:8 190:5 192:5,15 196:13 217:5,6,9 229:11 230:18 242:4 257:20 262:15 298:3 325:11 327:8 359:18,19 363:11 363:13 420:15	424:3 talks 160:19 tariffs 50:14 53:1 288:20 task 42:7 182:1 378:12,14 tasked 25:6 257:16,17 tax 77:8 team 15:18 16:5 17:12 25:3,4,20 26:2 30:8 31:2,10 32:13,19 57:9 76:20,21 161:7 teams 19:7 25:6 technical 324:20 352:2,5 426:12 427:5,10 technology 44:12 ted 11:22 227:21 telecommunicati... 18:4 telephone 71:18 90:5 125:12 206:9 telephonically 4:15 5:16 tell 11:5,17 13:15 16:14 17:19 18:18 21:22 33:6 42:8 55:5,10 60:6 65:10 66:17 71:5 74:7 75:20 78:15 94:10 100:18 117:20 118:8 122:11 126:11,21 127:5 135:4,9,14 136:10,17 137:2,3 139:6 140:3 144:22 152:21 153:21 154:12 156:14 159:22
--	--	--	--

[tell - think]

Page 59

169:5 172:19	325:14	280:6 287:19	197:8 201:20
174:11 175:8	teramoto's 163:8	291:21 292:19	204:13,17,17
176:1,15 178:22	term 16:15,16	293:1,6,18 295:2	226:8 229:9
185:14 195:18	43:22 44:2 158:3	298:9 303:19	239:20 257:16
196:5 203:10	313:3 329:9 356:9	304:21 312:11	266:19 285:14
205:20 206:17	357:14 358:1	347:15 400:18	288:22 289:4
207:17 210:10	terms 126:15	410:8 437:6,7,11	302:3 307:10
211:17 217:9	328:4	438:4,5	309:13 347:6
219:16 220:8	test 253:19 260:4	testing 334:13	356:11 419:3
228:15,18 267:3,4	333:9 334:3,18	thank 21:18 28:17	think 22:20 25:11
267:9 284:14	335:3	56:9 70:21 120:17	28:19 29:11 37:3
289:19 298:18	tested 333:15	158:18 182:2	39:21 41:16 55:4
314:1 316:16	testified 9:16	186:16 212:13	55:12 61:16 63:8
322:13,16 323:1	22:10 57:1 68:8	215:21 218:8	65:19 66:4,8 75:5
358:18 371:5,15	68:20 81:16,19	224:13 230:6	75:5 77:14 78:9
374:15 376:17,19	104:2 107:14	243:20 249:12	85:16 86:1 90:1
397:6 404:7	108:3 109:7	278:19 294:18	94:20 102:4 103:4
415:14 417:19	165:10 166:19	335:16 336:3	103:13 106:7,16
420:3	184:10 200:7	372:22 420:11	106:17 109:19
telling 58:18,22	208:9 214:10	424:2 439:12	115:1 123:19
78:13 85:9 136:3	248:13 255:13	thanks 77:17	124:3 125:17
151:12 207:4	287:22 288:3,4	166:3 236:7	128:10 131:6
223:14 367:1	291:18 305:7	318:19	141:5 150:6,8
397:3	337:6 345:1 346:4	thanksgiving	155:13,14,14
temporary 124:18	356:19 406:17	15:20 26:1	156:2 157:11
ten 12:2 250:6	410:20	theirs 320:21	158:2,17 168:11
364:20	testify 132:7	theoretically	169:2 174:6 178:1
tens 364:11	246:17 288:10	281:2	179:2 180:2,2,22
tenth 4:12	290:14 319:4	thereabouts 324:6	187:16 190:15
teramoto 32:21	testifying 288:20	thing 79:21 107:7	193:1 198:7 199:3
39:16 75:14 97:3	288:21	154:5 251:17	199:17 203:7
102:6 121:14	testimony 2:22	307:5 322:4 334:9	209:14 211:11,11
138:9 144:18	45:9,15 61:19	361:22 362:9,14	212:12 219:8
159:10 189:17	108:5 148:2,4,15	362:14 417:19	222:19 223:17
197:11,22 199:7	177:9 210:2,6,7	things 41:16 74:12	233:1 236:13
202:2 205:6	231:22 246:1,10	84:3,5,6,12,21	237:20,20 240:10
208:21 218:16	246:22 247:2,3,15	86:3 92:10 106:12	244:1 260:3 271:8
220:19 221:2	247:21 249:20	106:15 108:20	272:14 273:14
231:13 235:7	252:10 253:13,18	109:9 112:17	274:13,13 277:13
236:1,6 255:18	253:22 254:22	129:2,3,5 150:16	278:16 279:14,14
256:18 298:13	276:12 279:4	163:16 168:5	285:2 286:20

[think - topics]

Page 60

289:16 299:8	thoughts 342:13	188:3 189:3	338:1
300:4,8 303:18	three 78:4 125:18	197:12,13 198:4	timing 30:17
312:16,19 314:12	162:5 178:1,19	201:10,18 203:11	141:4 317:7
314:18 317:8,13	180:3 183:22	203:20 204:17	title 35:12 139:6
320:3 321:15,20	256:5 270:12	207:3 211:6,9,11	198:7 282:1,4
323:2 328:1,10	271:7 277:16	211:20 212:1,5	378:5,6 386:10
332:15 334:8,15	310:11 316:1	219:2,7,9 223:19	titles 281:19
336:7 337:5,21	323:8,12 328:6,6,7	224:7 225:4 227:4	today 10:6 11:6
338:18 342:1,6,20	365:17	228:10 229:4	62:14 97:19 99:22
343:5,22 345:1,11	threshold 150:18	230:3,6 233:9	114:21 138:4
346:3,6 347:2	thresholds 150:14	237:7,7 240:19,22	147:19 165:6
352:22 354:22	154:11	242:8 250:8,12	197:2 212:22
358:2 363:14,19	thursday 1:10 8:4	251:2 252:2 257:9	225:5 227:5
364:16,19 367:17	440:6	258:14 259:6	244:10 335:22
369:20 382:20	time 9:11 20:7	271:13 281:3,16	336:2 381:8 384:6
386:18 389:20	21:8 22:7 27:13	281:17 283:3	385:16 423:19
391:20 400:2	28:22 31:1 34:17	285:15,16,18	435:16
406:3 410:7,11	38:16 40:19 46:12	287:13 289:7	today's 436:4
413:9 414:2,16	49:7 52:6 55:9	290:3 304:14	todd 17:10
422:2,8 425:5	57:4 59:22 60:20	308:16,19 309:1	told 27:5 34:1
427:22 428:4,10	62:19 63:1 64:13	319:21 335:6,12	81:13 83:22 84:8
428:16,17 433:11	64:20 74:6,18	335:15,18 341:2	112:13 119:15,19
thinking 192:2	75:11,13,22 83:13	342:1 343:19	120:5 148:7
387:15 389:1	84:9 86:11,13	344:2 353:11,22	153:15,20 162:18
thinks 58:11	87:1,1,5 94:5,11	371:7,13 372:2	166:8,10 173:8
222:15 254:9	94:15,18 96:7	380:18,22 397:5	176:10,21 184:15
third 43:16 310:11	97:19 99:7,13	403:4,14 411:18	193:7 210:4 236:1
339:10 350:11	104:12 109:3	411:19 413:12	239:14 245:16
352:12	111:3,7,11 112:16	419:15,18,20	264:16 337:9
thirds 80:11	112:20,21 113:6	420:12,20 423:18	381:15 410:22
thompson 59:18	114:17,21 115:7	435:11,14,19	426:4
59:21 142:19	116:1,8 125:8,19	436:5	tomorrow 209:1
162:17	127:20 128:12,13	timeline 183:16	231:14
thompson's 148:1	133:11 134:19	times 125:11,16,18	top 130:2 149:15
148:14	138:4 142:2,3	125:18 143:22	202:6 209:6 429:2
thought 96:14	143:2 145:17	162:4,5,5 168:7	topic 59:19 87:2
97:7 99:9 103:1	147:1,19 150:15	169:1 177:21	131:4,16 142:1
107:13 168:16	158:10,13 162:21	178:1,17,19,20	143:1 171:1 187:6
186:17 254:20	164:3 165:5 178:2	179:21 180:3	232:10 288:19
255:2,7 326:10	179:7 182:1 186:1	256:14 271:7	topics 57:20 58:21
364:14	186:17 187:14,21	277:15,16 316:1	59:6 61:7 85:22

[topics - understand]

Page 61

86:10 88:16,22 93:6 140:22 393:9 404:20 total 328:8,9 418:11 touch 59:18 217:13 touched 227:16 track 45:3,17,21 51:15 150:9 411:6 tracks 22:9 trade 12:5 274:16 274:21,22 traffic 376:19 training 13:18 14:9,11,19,21 15:2 transcribed 295:4 transcribing 10:18 transcript 3:11 10:20 293:5,9,13 293:15 295:4 439:7 transcription 438:5 transition 15:18 16:5,9 17:12 25:3 25:4,19 26:2 30:8 31:2,8 32:13,19 76:2,19,21 123:21 123:22 124:10,13 126:4 161:7 383:16 transitioned 30:15 transmit 422:12 422:21 425:9 transmittal 219:10 transmitted 49:15 49:20 238:10,14 238:15 transportation 12:1	treating 168:18 tremendous 142:1 223:18,20 trial 316:6,14 333:17,21 334:1 tried 20:2 65:16 193:14,20 troublesome 261:8 true 418:7 437:10 438:4 trump 3:9 383:13 383:21 384:3,13 388:4,14 392:2,20 393:13 trump's 392:15 trust 340:18 truth 295:12 truthfully 70:5 try 10:22 28:21 30:4,19 41:2,15 68:14 84:4,19 128:20 135:16 162:11 305:13 332:13,16 336:20 trying 32:3 42:4 48:7,9 51:13 86:4 89:4,13 128:16 129:2 155:13 162:21 168:13 224:9 254:6 261:18 282:7 314:19 317:15 356:6 362:1 366:22 397:13 398:13 turn 8:8 121:7 329:17,18 346:16 352:9 358:7 428:13,19 turnaround 49:7	turned 283:12 turning 352:11 373:19 377:3 turns 278:7 twice 23:2 209:14 322:15 two 12:5 14:1 16:18 18:5 31:5 49:10 80:11 86:2 86:21 100:11 106:11,15,16 125:18 141:22 142:6 150:14 162:5 180:3 214:7 214:10 242:21 243:9 270:11 277:18 287:12 294:11,14 310:11 323:8,12 328:5,6,7 345:2,5 346:7,8 349:11,21 351:13 410:17 430:10 433:16 typewriting 437:9 typical 28:10 51:9 51:10 52:15 53:20 202:2 243:8 typically 22:5 30:1 41:1 49:8,13 51:17 60:13,17 90:4,6,18,21 91:5 91:6,10 92:9 98:18 102:16 279:13 320:5 356:14 typing 66:6 u u.s. 6:10,14 9:20 152:18 207:7 438:16	ucsb 12:9 14:2 uh 31:11 67:8 79:1 103:3 123:15,17 127:9 128:15 149:19 151:16 159:3 213:7 229:14 231:11 280:9,11 292:4 293:22 326:13 328:22 339:12 341:7 358:10 362:21 377:5 ultimately 267:19 427:16 umpteenth 133:11 unable 20:4 unanswered 373:17 unavailable 399:1 unaware 278:5 unclear 10:12 uncommon 185:12 185:14 204:18 276:14 282:17 undercount 361:16 393:17 394:21 395:21 399:15 401:6 404:11 406:6 underestimate 416:22 underestimated 81:11 undergraduate 14:16 underlined 58:11 139:21 understand 10:11 15:10 21:15 29:17 43:12 64:12 70:12 70:20 79:3 110:6
--	---	--	--

[understand - venued]

Page 62

115:9 116:17,19 128:1 138:13 139:13 148:18 172:20 187:18 200:18 202:22 214:20 222:7 223:2 241:10 253:3 254:8,15 259:4 260:7 293:10,11 298:13 299:16 302:4 307:18 308:4 309:10 310:13 311:21 312:10 313:6,8 329:7,9 343:2 358:18 366:22 381:12 382:12 389:8,10 414:12 420:16,17 423:17 429:1 understanding 93:8 113:12 154:3 171:19 176:4,6 180:15 181:5 188:18 203:19 221:8,10 230:12 235:14 247:15 248:12 252:15 253:6 260:3 266:13,17 277:9 281:21 300:20 301:14 302:21 304:1 307:15 308:8 314:21 315:1 343:13,15 349:7 354:9 355:20 356:6 370:16 371:1,5 392:4,14 393:1,5 398:7 400:18 414:21 415:3	understood 151:11,13 223:5 245:22 246:17 274:19 276:18 317:1 326:16 342:22 343:7,8 undertaking 331:3 underway 78:19 79:2 undocumented 63:21 65:3,20 66:1 81:12,18 262:10 349:14 unfamiliar 30:4 unfortunately 77:10 276:14 333:6 374:10 unified 4:14 union 4:7 unique 20:8 unit 8:13 111:6,10 158:12 212:1,4 250:8,11 308:18 308:22 380:17,21 united 1:1,6 8:17 8:18 207:13,19 364:22 385:2 413:16 438:18 440:3 university 11:20 13:20 unión 381:7 unquote 83:9 388:19 unredacted 145:21 227:8 229:15 unusual 45:5 66:10 119:13 243:17	upcoming 57:18 95:20 147:2,5 244:20 update 40:17 119:10,13 172:16 214:4 222:13 225:10 226:4 230:9 233:2 236:10,11 updated 76:8 222:13 231:6 updates 119:4,8 232:19 updating 233:5 upper 159:7 uproar 131:2 ups 360:12 urgency 204:10 urgent 73:20 168:9,16,18 204:19 usdoj.gov 6:12,12 use 16:15 158:3 177:3 180:11 190:10 262:21 296:2,14,17 297:7 307:9 310:21 312:2 313:3 315:4 319:11 329:9,15 353:12 354:1 357:19 365:7 368:15 382:7 383:7 403:19 418:19 423:10 425:3 useful 126:15 176:7 252:22 272:20 273:1 275:7 279:18 297:3,18	uses 350:4 357:22 usual 45:20 usually 49:5 52:21 128:20 150:11 204:16 273:13 347:9 uthmeier 95:14 97:2,15 100:4 155:15 156:3 186:6,22 187:6,13 188:6,8,19 195:3,9 195:18 214:11 217:8 220:20 225:2 227:14 228:18 231:13 232:2 242:18 243:16,22 246:9 255:20 288:14 345:10 369:12 386:18 utilize 185:4 utilized 153:18
v			
v 8:16 381:5 420:9 438:18 440:3 v10 320:2 valid 267:14 301:5 302:8 303:5,6 value 279:16 410:15 var 399:22 variation 417:15 variety 106:21 329:15 418:20 various 95:19 96:10 244:5 417:18 vast 282:13 velkoff 335:2 venued 336:13			

[veritext - way]

Page 63

veritext 3:18 9:2,4 version 227:7 229:16 311:17 319:2 320:3,8 321:10 375:21 versions 245:4 320:10 versus 364:9 417:14 vicinity 22:21 178:19 323:14 victoria 335:2 victoria's 125:2 video 8:10,13 111:7,11 158:10 158:13 212:5 240:19,22 250:8 250:12 308:19 309:1 335:12,15 380:18,22 419:18 435:11,14 436:5,5 videographer 7:1 8:3 9:3 111:6,10 158:9,12 211:15 211:22 212:4 240:18,21 250:7 250:11 308:18,22 335:11,14 380:17 380:21 419:14,17 435:10,13 436:4 view 103:17 105:6 105:9,12 106:2 107:2,5,18,22 108:8,14 109:8 110:8 113:12 156:15 180:18,22 192:4,14 284:22 307:7 311:21 312:17,19 314:20 335:19 402:4	viewpoint 370:1 viewpoints 402:20 views 320:15 402:1,4,7,11,14,15 404:22 villages 20:1 volume 331:2 vote 350:1 voter 393:14 394:19 395:19 399:13 401:4 404:11 406:5 408:10 409:6 voters 364:5 voting 14:19 126:16 127:3 153:18 155:8,9 192:13,17,18,21 192:22 193:8,9,11 193:14,17 194:8 262:9,16,18 263:13 264:9,9 265:1,5,11,12 268:3,9 271:1,14 272:17 275:8 277:11 295:1 349:6,8,18 351:9 368:17 381:22 382:6 383:6,6 400:4 403:7,16 409:19 410:1 411:15 423:13 427:18 vp 124:22 vra 251:10,18 277:6 394:2 395:6 396:6 401:13 404:14 406:8 408:14 416:3 vs 1:5	w wait 10:21 79:5 wall 67:7 80:1 81:21 146:14 402:22 409:13 walls 256:22 257:5 257:6 walsh 6:19 95:7 97:2 98:6 100:1 246:9 318:16,19 want 18:18 59:9 91:22 103:11,15 110:5 116:11 131:19 161:10 191:18 240:12 242:3 250:17,21 254:1 257:11 260:2,4 268:8 270:16 272:12 273:5,6,11,17,22 274:6,12 275:2 277:20,20 279:6,8 279:19 280:1 282:15,21 283:6 284:8,9,12,19 289:1 293:8 294:2 302:11,16 310:10 311:12 312:10 316:5,7,15 341:10 350:12 363:13 383:19 398:19 424:17 427:22 428:5 429:1 wanted 64:11 86:9 116:19,22 130:20 142:18 154:14 160:7 170:17 171:16,20 172:1 176:2,11,11 190:13 218:2 226:13 243:3	252:16 258:11 260:6 261:4 270:5 272:8 285:22 287:16 291:2 299:9 300:6 332:10 337:10 348:5 382:5 435:21 wanting 176:22 260:16 268:1 286:11 383:5 wants 38:2 40:4,7 44:17 226:15 251:22 252:2 253:7,13 258:2 262:1 266:16 306:10,20 333:21 385:2 423:18 warn 162:19 warrant 265:19 warranted 96:15 97:8 103:2,6 106:13 107:14,20 108:1,10 109:9 110:1,3 washington 1:9,16 3:19 4:5,12 5:3,8 5:13 6:11,17,21 8:22 32:18 77:14 228:5 402:22 438:17 439:16 watched 293:17 watermark 376:2 376:6 way 34:7 64:11 68:19 78:4 80:11 90:5 92:17 106:10 107:4 142:8 152:18 185:10 243:8 260:6,11,13 260:15,17,22
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[way - words]

Page 64

261:17 266:13,19 266:20 267:2,4 273:22 280:22 284:8 302:16 305:13 310:13 321:1 332:17 337:16 346:3,3 348:11 349:5 367:6 368:14 379:12 423:19 428:6 432:6 ways 45:1 53:3 we've 26:7 53:1 87:12 104:20 111:2 145:11 308:17 320:7,11 344:11 350:8 381:8 383:2 386:7 387:14 419:11 web 66:14 208:10 208:13 website 66:3,5,7 66:19 390:5 wednesday 148:5 148:8 week 49:11 156:21 178:4 233:14 387:5 weeks 174:15 188:3 221:1 277:18 287:12 weigh 363:13 weighing 362:9 363:8,10,12 weight 366:6 welcome 212:8 wendy 32:21 33:3 39:16 75:14 97:3 102:6,8,9,14,15 121:14,18 122:11 122:14 138:9	144:18 159:10,17 160:15 161:2 164:2,4 173:4,18 189:15 191:8 197:22 205:6 210:12,13 218:16 235:7 236:7 255:18 256:18 257:2 325:14 went 11:19 12:6 12:17 170:16 269:21 271:4 283:4 296:12 297:9,16 371:16 372:9,11 381:20 383:10 when's 27:19 63:1 83:13 94:5,15,18 145:17 147:19 225:4 227:4 whispering 8:6 white 48:4,8,16,19 49:4,9,15,21 50:9 50:11,15,16,16 51:4,7 74:5,7,12 74:17 167:18 173:12 283:9 388:1 391:16,20 393:8 395:9 410:12 widely 330:11 wife 115:10 wilbur 200:19 213:17 willing 271:22 296:22 wise 5:16 wishes 239:18 withdraw 156:9 294:2	withdrawn 138:19 246:12 251:7 252:13 254:21 260:14 271:20 275:18 278:18 282:6 290:12 299:14 304:19 322:7 323:22 327:10 328:18 witness 9:13,15,17 26:15 56:8 62:16 70:21 87:11 93:17 114:9 116:15 117:7 118:13 120:2,8,17,19 122:8,22 130:14 133:3 134:1 140:8 143:9,18 144:22 145:10 146:20 149:1 159:22 160:11 161:6,17 163:6 165:21 166:16 182:9 186:13 187:2 189:2 190:20 191:16 194:5 195:13 196:1,4 201:2,16 202:21 204:12 206:13 210:7 211:7,12 215:21 218:8 224:5 225:22 226:7 235:19 243:14 247:3,22 252:5 253:9,19,22 254:14 255:10 258:7 259:12 263:21 268:16 274:11 275:5 276:6 280:16 284:22 286:8,17	287:1 291:15 297:15 299:13 301:4,19 303:5 304:8 305:3,20 306:14 307:2,22 308:14 311:16 329:4 331:13 334:22 336:3 340:17 341:12 343:22 345:21 353:17,21 366:22 380:9 381:19 384:17 390:4,13 392:10,19 404:16 407:17 409:2 410:7 412:12 413:9 415:11,19 415:21 423:5 425:5,17 426:3,16 427:9 428:10,17 433:19 436:3 437:5,8,11 439:5 440:5 witness's 108:5 210:6 247:2,21 253:18 woliver 4:15 word 34:3 66:22 70:13 81:5 108:9 180:21 287:21 292:10 298:17 307:9 358:19 360:6 362:18 429:15 430:11 wording 324:1,13 346:6,8 words 43:13 176:14,20,21 237:3 251:21 275:13 298:4 330:8 337:21
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[words - york]

Page 65

353:8 356:2 360:2 423:12 work 9:19 10:1,15 17:15 30:7,10 38:1,3 40:3,4,7 42:3 43:5 44:10 44:18 62:17 73:18 74:22 89:19 112:18 124:21 150:2,14 153:2,6 199:5 201:19 228:1 229:1 243:21 254:7 256:16,17 260:6 260:11,18,20 266:17 268:5 276:16,20 277:1 280:10 282:11,15 284:12,16,20 285:5 337:22 338:20 371:13 378:2 worked 11:21 25:15,16 75:6 76:1 98:16 104:8 152:12 167:20 168:1 235:15 242:13 243:5,9 248:7 255:13 289:9 389:11 workers 21:8 124:18 working 11:22 12:17 15:20,22 43:10 50:5,13,17 51:13 52:9 54:6 76:9 77:18 97:13 97:15 99:6,13 113:5 118:22 129:2 195:14 198:13,16 199:13	201:11,12,17 209:20 211:1,4 214:8 223:20 226:10 234:6,10 234:12,13 237:12 257:10,15,15 355:13 411:17 421:21 workload 285:1,1 works 34:7 45:11 57:2 58:4,7 97:4 128:6 152:19 200:8 228:2 377:21 386:1 world 103:9 262:12 worry 91:18 worst 146:3 148:18 worth 150:19 worthy 108:10 writes 162:10 236:6 written 146:2 148:2,14 208:21 wrong 205:21 246:2 262:14 325:3 336:9 wrote 147:18 151:17 159:11 213:1,22 214:3 269:16 339:19 340:4 380:6,14 396:18 430:11 432:20 433:3 www.census.gov 66:13	41:21 43:11 44:19 49:19 52:4 54:6 57:10 60:8,20 79:4 83:10 87:21 88:4,19 89:3 92:10 98:8 102:1 109:19 114:19 116:3 135:13 156:1 159:15,15 159:22 196:16 220:3 243:17 247:13 254:5 269:20 271:7,10 271:12 276:19,20 278:9 280:19 287:6 289:3 292:8 292:9 297:21 307:22 310:17 313:6 314:8 327:17 328:14,17 329:19 353:4 354:22 370:13 374:2 403:12 432:7 435:8 year 12:7,20 35:16 43:16 44:10 75:6 88:22 89:1 108:17 130:9 131:5,9 132:11 199:4 226:9 241:20,22 242:4 244:14 288:5 292:5 328:6 334:18 335:4 338:2 346:20,21 years 11:21 12:2,4 12:5,6 14:1 104:10 261:6 263:9 266:22 292:16 294:16 307:3 347:7 413:21	yep 58:17 63:6 67:21 72:5 80:10 80:14 81:4 96:17 125:13 138:12 145:14 148:12 149:21 269:18 330:4 339:7 yesterday 11:7 63:3 94:20 97:20 98:1 138:6 145:18 145:19 165:7 225:11 227:6,7 230:10 york 1:2,3 4:1,3,7 4:8,8 5:12 6:1,5,5 8:16,19 10:2 241:3 438:18 440:2
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	yang 5:6 yeah 15:19 16:16 24:1 27:7,19,22		

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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